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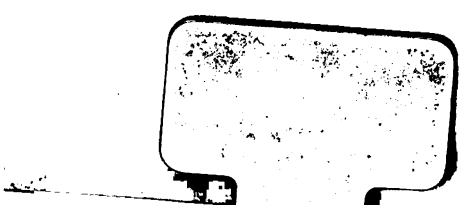

THE ACT

FOR

Promoting the Public Health,

WITH NOTES,

AN ANALYTICAL INDEX,

AND

(BY WAY OF APPENDIX)

The Nuisances Removal and Diseases Prevention Act, 1848,

SOME ADDITIONAL FORMS,

AND

A TABLE OF RATES

LEVIABLE UNDER THE PUBLIC HEALTH ACT.

By EDWARD LAWES, Esq.

BARRISTER-AT-LAW.

"We will mention the blessing of health: I mean generally of the people, ... which is one of the great favours of God towards any nation. For as there be three scourges of God, war, famine, and pestilence, so are there three benedictions, peace, plenty, and health.

LORD BACON: *Works*: (4to. 1765) Vol. II. p. 30.

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TO

THE RIGHT HONOURABLE

GEORGE WILLIAM FREDERICK

EARL OF CARLISLE,

VISCOUNT MORPETH,

&c. &c. &c.

BY WHOM

The Public Health Bill

WAS

SUBMITTED TO PARLIAMENT,

AND

BY WHOSE TALENT, TEMPER, PERSEVERANCE,

AND

DISINTERESTED EXERTIONS,

THAT HUMANE, BENEFICENT, AND MOST IMPORTANT MEASURE

ULTIMATELY BECAME LAW,

THIS EDITION

OF

The Act

IS DEDICATED

(BY PERMISSION)

WITH EVERY SENTIMENT OF THE MOST SINCERE RESPECT,

BY

HIS LORDSHIP'S FAITHFUL AND VERY HUMBLE SERVANT,

THE EDITOR.

PREFACE.

After having occupied a considerable share of public attention for the last ten years, the subject of Sanitary Reform was recommended from the throne to the earnest consideration of parliament at the opening of the session 1847–8, and in conformity with that recommendation "A Bill for promoting the Public Health" was introduced into the House of Commons on the part of Her Majesty's Government by Viscount Morpeth (now Earl of Carlisle), on the 10th of February following. The Bill was well received, and about a fortnight afterwards was read a second time without opposition. But, partly owing to the state of public business, and partly to a desire that the measure should be fully considered throughout the country, it was not discussed in committee until after the lapse of several weeks. In the interval various suggestions from different parts of the country were carefully considered, and many of them introduced into an amended draft printed by order of the House of Commons on the 15th of March.

This, however, was not the first attempt at legislation on the subject, a bill for the sewerage and drainage of towns having been brought into the House of Commons by the Earl of Lincoln under the auspices of Sir Robert Peel's Government towards the close of the session of 1845, and another, commonly known as the "Health of Towns Bill," by Viscount Morpeth in 1847. To inquire into the points of agreement and disagreement between these several legislative projects would now be of little importance; suffice it to say that each was founded upon the admirable reports of the commissioners for inquiring into the state of large towns and populous places, and that the points of difference consisted in the machinery and details by which it was proposed to carry out the common object—the improvement of the Public Health. But a very cursory consideration will be enough to show that in these points of difference—machinery and details—lie the difficulties which have been felt and acknowledged by the successive administrations which have turned their attention to the subject. Those difficulties have at length been overcome by the passing of the Public Health Act; and without detracting in the slightest degree from the credit so justly due to former labourers in the same cause, it may fairly be suggested as matter of pride and congratulation to Her Majesty's

present Government that they should have been the first to carry a large and comprehensive measure of Sanitary Reform. To the excellent nobleman to whom these pages are dedicated the country is under the deepest obligations; his exertions are eminently conspicuous; and he would be the first to acknowledge how much the distinguished talents of the Attorney General in the House of Commons, and of Lord Campbell in the House of Lords, contributed to his success. The importance of the measure cannot be overrated, whether regarded by itself as a great step in practical legislation, or as "laying the foundations for continual advances in the same beneficent work."

The subsequent progress of the Bill was far less easy than might have been expected from the manner in which it was received. It underwent nearly every stage of parliamentary ordeal, and in addition to the difficulties which, under other circumstances, might have been anticipated, there arose a serious misapprehension as to the nature of the General Superintendence which it was proposed to establish. It was assumed that *centralization* and a constant interference by the state with local concerns constituted the fundamental principle of the measure. Nothing could have

been more erroneous, or more at variance with the real and avowed intention of its promoters; but the misunderstanding rapidly settled into prejudice, and it was found necessary to modify, in particular instances, the powers with which it was proposed to invest the General Board of Health. And (perhaps as a necessary consequence of the same misunderstanding) the modification so made has induced many to suppose that the Act as ultimately passed was a total departure from the principle of the original Bill; but notwithstanding all that has been said upon this head it may be safely affirmed that in almost all substantial particulars the Act is identical with the Bill originally introduced, and that (with the single exception of the clause for preventing the nuisance of smoke), there has been no sacrifice of any important matter either of principle or detail. In so saying, the substitution in certain cases of a provisional order and the special sanction of parliament for the more simple proceeding by order in council has not been forgotten; for though, at first, it was feared that the alteration might hamper the operation of the measure, further consideration has tended to show that the slight delay which the substituted machinery may sometimes occasion will be more than compensated by the great facility afforded for dealing with

existing Local Acts and the special circumstances of each particular locality. So with respect to the alteration in the numbers required to originate petitions for the application of the Act, the additional provisions subsequently introduced, by which the benefits of the Act may be conferred without any petition at all wherever it appears upon the returns of the Registrar General that the mortality has exceeded a certain proportion, counterbalance the absence of the facilities originally proposed. So also with respect to the provisions for obtaining a good and abundant supply of water at reasonable rates, and the triple alteration to which they were subjected, it may be matter of surprise to those unacquainted with the progress of the bill that the plan ultimately agreed to was a restoration, in every material particular, of the scheme propounded in the first draft. Other branches of the Bill passed with scarcely any alteration, or with alterations of very secondary importance; and amongst these may be mentioned the provisions which wrestle with the difficult subject of interment in towns, and those which introduce an entirely new system of rating. And after all, considering that the whole subject was essentially one for adjustment, it does not argue meanly for the character of the original Bill that it was found so capable of being easily adapted to the numerous

and frequently conflicting suggestions to which it gave rise. It was conceived, framed, and conducted in an honest spirit: let us hope that in this spirit the Act will be received and considered, and that the same spirit may attend the working of the measure, actuating alike those who may adopt, execute, or superintend it.

The discussions upon the Public Health Bill immediately paved the way for other important measures of a similar character. The Act for consolidating the Metropolitan Commissions of Sewers, the Nuisances Removal and Diseases Prevention Act (by which a temporary Act applicable to the whole of the United Kingdom was converted into a permanent law, with great improvements both in machinery and detail),* and the Act for improving the sanitary condition of the City of London, all followed in rapid succession, and without a whisper of opposition.† Other measures of a minor character might also be included in the list; but enough has been said to justify the assertion, that the Session of 1847-8 was rich in sanitary legislation.

* This Act is printed in the Appendix, *post*, p. 209.

† The first and second of these Acts were government measures; the last was founded upon a bill brought in under the direction of the Corporation of London.

It remains to say a few words with respect to the present publication. The Public Health Act constitutes the principal text; and the Nuisances Removal and Diseases Prevention Act, two or three additional forms, and a paper exhibiting in a tabular form the rates leviable under the Public Health Act and their several incidents, are inserted by way of Appendix. To the principal Statute foot-notes are added, in which pains have been taken to explain its structure and collate its numerous provisions; references both backwards and forwards by pages, as well as by sections, have been inserted throughout; and the marginal notes have been completely revised, and many additional ones introduced. Some novelty has been introduced in the method of printing both statutes, the several sections having been divided into appropriate paragraphs; and advantage has been taken of other facilities afforded by the printer. The text of the whole has undergone the closest examination: in some few instances it will be found to vary from the copies issued by the Queen's printers previously to the 9th of November; but wherever a variance occurs, the text of this edition has been verified by the original roll, and will be found to correspond with the Queen's printers' copies issued since that date.

Some points respecting the claim of the Commons to the exclusive right of originating and dealing with matters of local taxation, arose out of the discussions upon the Public Health Bill; and these, as well as others illustrative of defects in the present system of ingrossing Bills in Parliament, are adverted to in the notes.

TEMPLE, *Nov.* 27, 1848.

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11 & 12 VICT. CAP. 63.

AN ACT

FOR PROMOTING THE PUBLIC HEALTH.

31ST AUGUST, 1848.

WHEREAS further and more effectual provision ought to be made for improving the sanitary condition of towns and populous places in England and Wales, and it is expedient that the supply of water to such towns and places, and the sewerage, drainage, cleansing, and paving thereof, should, as far as practicable, be placed under one and the same local management and control, subject to such general supervision as is hereinafter provided (*a*): Be it Preamble.

(*a*) The preamble is framed in conformity with the first recommendation of the commissioners for inquiring into the state of large towns, &c. (Second Report, folio, pp. 10, 13.) Lighting, and certain other powers commonly contained in local improvement Acts, are not referred to, inasmuch as they have no immediate relation to the works required for sanitary purposes; but in a subsequent section (10) provision is made for transferring to the local boards to be constituted under this Act all lighting powers granted by any local Act, otherwise than for private profit, and all powers contained in any local Act for "paving, cleansing, watching, regulating, supplying with water, or improving any city, town, borough, parish, or place" to which the statute in the text is applied, or otherwise "having relation to the purposes" of that Act. By a proviso

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therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act may from time to time be applied (*b*), in manner hereinafter provided, to

Act may be applied to any part of England and Wales,—

in the same section, the powers of waterworks companies to supply water for their own profit cannot be interfered with without consent.

(*b*) The Act is framed with a view to its *application* to districts to be formed for the purposes of the whole or any part of the Act; and with the exception of one section (50), no part of the Act can be so *applied* until after an inquiry on the spot by a superintending inspector, nor without an order in council, or an order (called a "provisional order") of the general board of health specially sanctioned by parliament. But whether an order in council or a provisional order should be resorted to, is not matter of discretion, and the course to be adopted must be decided by the following considerations:— If, after inquiry by the inspector, *upon petition* of one-tenth of the inhabitants, rated to the relief of the poor, of any "city, town, borough, parish, or place having a known or defined boundary" in which there is *no local* improvement *Act*, nor any local Act for watching, or for lighting (otherwise than for private profit), or for supplying water, it appear to the general board of health that a district should be formed having the *same boundaries* as those of the city, &c., from which the petition proceeded, the Act must be applied by order in council. If, on the other hand, the inquiry has been made without petition (as it may be in places where it appears by the registrar-general's returns that, on an average during seven years, there has been an excess of mortality), or if there be any such local Act, or if it be considered by the general board that a district should be formed having boundaries either larger or smaller than, or in any respect different from, those of the city, &c., in respect of which inquiry has been made, the Act can only be applied by provisional order of the general board of health sanctioned by parliament.

any part of England and Wales, except the parts next hereinafter mentioned; (that is to say)— 11 & 12 Vict. c. 63, s. 1.

Except the city of London, and certain parts in the neighbourhood thereof.

The city of London and the liberties thereof (*c*);

The parts within the limits of certain commissions of sewers, bearing date at Westminster the thirtieth day of November in the year of our Lord one thousand eight hundred and forty-seven; also the parts within the limits of a certain other commission of sewers, bearing date at Westminster the fourth day of December in the year last aforesaid (*d*);

Section 50, constituting the exception above referred to, applies only to parishes and places not forming part of a "district" under the Act, and having a population not exceeding two thousand upon the last census for the time being. In such cases the churchwardens and overseers are authorized to execute certain works, and to defray the expense out of the poor-rates, by vote of the inhabitants alone. (*See* s. 50 and note (*g*), *post*, p. 83.)

It may be as well to add, that the word "applied," and the expression "the application of this Act," are used throughout the statute in a technical sense. When a preliminary inquiry is instituted in a city, &c., the Act is not *applied* to such city, &c., within the meaning of the statute, the inquiry being instituted only *with a view to the application* of the Act to a district to be formed for the purposes of the Act.

(*c*) "An Act (11 & 12 Vict. c. 163, 'The City of London Sewers Act, 1848') to provide for the sanitary improvement of the city of London and the liberties thereof, and for the better cleansing, sewering, paving, and lighting the same," received the royal assent on the 5th September 1848. That Act will come into operation on January 1, 1849, and is to continue in force for two years, and "thence to the end of the then next session of parliament."

(*d*) These commissions are seven in number, and the districts for which they are issued are commonly known as the

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And the parts subject to the jurisdiction of the commissioners acting in the execution of an

districts of the Tower Hamlets, of Saint Catharine's, of Poplar and Blackwall, of Holborn and Finsbury, of Westminster and part of Middlesex, of Surrey and Kent, and of Greenwich. (*See* 11 & 12 Vict., c. 112, s. 1.) The limits are described in the several commissions thus:—*In the Tower Hamlets commission,*—"the limits of the Tower Hamlets (excluding Saint Catharine's and Blackwall Marsh), in the county of Middlesex," and "the borders or confines of the same;" *in the Saint Catharine's commission,*—"the precinct of Saint Catharine (exclusive of the Tower Hamlets and the liberties thereof), in the county of Middlesex," and "the borders or confines of the same;" *in the Poplar and Blackwall commission,*—"the limits of and between Limehouse and Blackwall, in the several parishes of All Saints Poplar and Saint Anne, in the county of Middlesex, called Poplar Marsh, otherwise Stebunheath Marsh, in the said county, siding to the river Thames, opposite to Deptford and Greenwich marshes, in the county of Kent," and "the borders or confines of the same;" *in the Holborn and Finsbury commission,*—"the limits of the Holborn and Finsbury divisions, the parish of Saint Leonard, Shoreditch, and the liberty of Norton Falgate, in the county of Middlesex," and "the borders or confines of the same;" *in the Westminster commission,*—"the limits of the parishes of Hampton, Teddington, Twickenham, Isleworth, Hanwell, Brentford, Acton, Ealing, Hammersmith, Fulham, Kensington, and Chelsea, in the county of Middlesex," "the city and liberty of Westminster and precincts of the same, and to Temple Bar, within the said county, and from thence to and within the parish of Saint Giles-in-the-Fields and Saint George Bloomsbury, Saint Pancras, Saint Mary-le-bone, Hampstead, Willesden, and Paddington, and so to the river Thames, in the county aforesaid," and the borders or confines of the same;" *in the Surrey and Kent commission,*—"the limits of the district extending from East Mouldsey, in the county of Surrey, to Ravensbourne, in the county of Kent," and "the borders or confines of the same;" *in the Greenwich commission,*—"the limits extending from the head of the river Ravensbourne to Lombard's Wall," in the county of Kent, and "the borders or confines of the same."

Act of the fifth year of the reign of King George the Fourth, for (amongst other things) more effectually paving, lighting, watching, cleansing, and regulating the Regent's-park, and in the execution of the several Acts for extending the jurisdiction of such commissioners (*e*).

11 & 12 Vict. c. 63, s. 1, 2.

5 Geo. 4, c. 100.

6 Geo. 4, c. 38; 9 Geo. 4, c. 64; 2 Will. 4, c. 56.

II. And be it enacted, that in the construction of this Act the following words and expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject-matter in which such words or expressions occur; (that is to say)

Interpretation of Terms:

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Number:

(*e*) By the recent Act for consolidating the metropolitan commissions of sewers (11 & 12 Vict. c. 112, s. 1), the Crown is empowered to issue one commission of sewers for the city and liberties of Westminster, the borough of Southwark, all parts within the limits of the commissions referred to in the text, all parts subject to the jurisdiction of the Regent-street commissioners, and any other "places or parts in the county of Middlesex, Surrey, Essex, and Kent, or any of them, being not more than twelve miles distant, in a straight line, from Saint Paul's cathedral, in the city of London, but not being within the city of London or the liberties thereof." But notwithstanding the issuing of any new or extended commission under that Act, the limits of the commissions now in force and the limits of the present jurisdiction of the Regent-street commissioners will continue to regulate the exception in the Public Health Act.

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Gender:

Words importing the masculine gender shall include females:

"Person," and words applying to persons:

The word "person," and words applying to any person or individual, shall apply to and include corporations, whether aggregate or sole:

"Lands:" "Premises:"

The word "lands" and the word "premises" shall include messuages, buildings, lands, and hereditaments of any tenure:

"Owner:"

The word "owner" shall mean the person for the time being receiving the rack-rent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent (*f*):

"Rack-rent:"

The expression "rack-rent" shall mean rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be

(*f*) The word "owner" is differently defined when used in relation to the right of voting at elections (*see* s. 20, p. 49); in such cases, therefore, this definition will not apply. The above definition is substantially the same as in the Towns Improvement Clauses Act, 1847; and the Liverpool Sanitary Act, 1846. It is also adopted in the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, s. 147.

In considering the construction of the word owner, the definitions of "owner" and "rack-rent" must be read together. The definition of rack-rent was introduced in the House of Lords; the first branch of it is substantially the same as the definition of the same word in the Poor Law Act (4 & 5 W. 4, c. 76), and the latter branch (with respect to the "full net annual value") is taken from the Parochial Assessment Act, 6 & 7 W. 4, c. 66, s. 1.

taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (*g*): 11 & 12 Vict. c. 63, s. 2. Full net annual value, in calculating rack-rent.

The word "month" shall mean calendar month: "Month:"

The expression "commissioners of her Majesty's treasury" shall mean the commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three or more of them, or the lord high treasurer of the United Kingdom of Great Britain and Ireland for the time being: "Commissioners of her Majesty's treasury:"

The expression "superior courts" shall include her Majesty's superior courts of record at Westminster, and the court of common pleas of the county palatine of Lancaster, and the court of pleas of the county of Durham: "Superior courts."

The word "justice" shall mean any justice of the peace acting for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of the "justice" arises: "Justice:"

The expression "two justices" shall mean two or more justices assembled and acting together in petty sessions, or one stipendiary or police "Two justices:"

(*g*) *See* the second branch of the last note.

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magistrate acting in any police court, for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of "two justices" arises (*h*):

"Court of general or quarter session:"

The expression "court of general or quarter sessions" shall mean the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place, as the case may be, in which the matter requiring the cognizance of the "court of general or quarter sessions" arises:

"Arbitrators:"

The word "arbitrators" shall include a single arbitrator; and the words "arbitrators" and "arbitrator" shall include an umpire:

"Oath:"

The word "oath" shall mean and include an affirmation in the case of Quakers, and a declaration in the case of persons allowed by law to make a declaration in lieu of an oath:

"Corporate borough:"

The expression "corporate borough" shall mean any corporate borough mentioned in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth,

5 & 6 W. 4, c. 76.

intituled "An Act for the regulation of municipal corporations in England and Wales," and any borough incorporated by charter granted

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(*h*) The law with respect to the jurisdiction of justices in adjoining counties, and in adjoining cities and places having exclusive jurisdiction, is consolidated and amended by the statutes 11 & 12 Vict. c. 43, s. 6; and 11 & 12 Vict. c. 42, ss. 5, 6.

or to be granted in pursuance of that or any subsequent Act: 11 & 12 Vict. c. 63, s. 2.

The word "district" shall mean the entire area, places, or parts of places comprised within the limits of any district to which this Act or any part thereof shall be applied by order in council or provisional order of the general board of health, sanctioned by parliament (*i*): "District:"

The expression "corporate district" shall mean a district in which the powers, authorities, and duties of the local board of health of the district are exercised and executed by the council of a corporate borough (*k*): "Corporate district:"

The expression "noncorporate district" shall mean a district in which the powers, authorities, and duties of the local board of health of the district are not exercised and executed by the council of a corporate borough (*l*): "Noncorporate district:"

(*i*) Parishes and places to which the 50th section is applied, are not included under the term "district" in any part of the Act, inasmuch as that section will be applied in all cases by vote of the inhabitants without order in council or provisional order.

(*k*) The town council will be the local board of health wherever the boundaries of a "district" are identical with those of a "corporate borough" (s. 12, pp. 32, 33), unless the borough be either Oxford or Cambridge, in which cases the Oxford and Cambridge improvement commissioners will be the local board (s. 31, 32, p. 60), or unless a special board consisting of the commissioners under local improvement Acts, or otherwise, be constituted the local board by provisional order of the general board of health, with the sanction of parliament (*see* ss. 10, 32, pp. 26, 61, 62).

(*l*) *See* the last note.

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"Street:" The word "street" shall apply to and include any highway (not being a turnpike road) (*m*), and any road, public (*n*) bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and the parts of any such highway, road, bridge, lane, footway, square, court, alley, or passage within the limits of any district:

"House:" The word "house" shall include (*o*) schools, factories, and other buildings in which more than twenty persons are employed at one time:

'Drain:" The word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom, with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more

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(*m*) The object and effect of this exception is to leave the management of turnpike trusts precisely in the same position as before the passing of this Act.

(*n*) The word "public" was added in the House of Lords solely with the view of exempting private *bridges* from interference. With the exception of this addition, the same definition is adopted in the Metropolitan Sewers Act, 11 & 12 Vict. c. 112. s. 147.

(*o*) It can be hardly necessary to observe, that when the word "include" in this and other paragraphs of the section is used alone, the ordinary meaning of the word defined is not *excluded.*

buildings or premises occupied by different persons is conveyed (*p*): 11 & 12 Vict. c. 63, s. 2.

The word "sewer" shall mean and include sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies (*p*): "Sewer:"

The term "slaughter-house" shall mean and include the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description, for sale: "Slaughter-house:"

The expression "waterworks company" shall mean any corporation, person, or company of persons supplying or who may hereafter supply water for their own profit: "Waterworks company:"

The term "waterworks" shall include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock in trade of any waterworks company: "Waterworks:"

The expression "the local board of health" shall mean the persons authorized to execute in each "The local board of health:"

(*p*) The definition of the words "sewer" and "drain" was introduced by the House of Lords upon the recommendation of the select committee to whom this measure was referred. The same definition is adopted in the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, s. 147.

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district all or any of the powers, authorities, and duties vested in or imposed upon the local board of health by this Act:

"The officer of health," "the clerk," &c.

The expressions "the officer of health," "the clerk," "the treasurer," "the surveyor," "the inspector of nuisances," shall mean the persons respectively appointed to be, or authorized to execute, the offices of the officer (*q*) of health, clerk, treasurer, surveyor, and inspector of nuisances respectively, in each district for the purposes of this Act.

Mode of citing this Act.

III. And be it enacted, that in citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Public Health Act, 1848."

General Board of Health.

General board of health to be constituted.

IV. And be it enacted, that the first commissioner for the time being of her Majesty's woods and forests, land revenues, works, and buildings, together with such two other persons as her Majesty by warrant under the royal sign manual may be pleased to appoint, shall be and constitute a board for superintending the execution of this Act, and shall be called "The General Board of Health," and shall have and execute all the powers and duties vested in or im-

(*q*) So in the ingrossment, but in the copies issued by the Queen's printer previously to the 9th of November, the clause stands thus: "the offices of the *officers* of health." The copies issued since that date have been corrected in this particular.

posed on such board by this Act (*r*); and the said first commissioner shall be the president of the said board; and her Majesty may from time to time, at her pleasure, remove all or any of the persons so appointed by her, and appoint others in their stead; 11 & 12 VICT. c. 63. First commissioner of woods, &c. to be president. Members removable at pleasure.

And the powers and duties vested in the said board Two members may act, &c.

(*r*) The specific powers given to the general board are:—to appoint superintending inspectors to assist in the superintendence and execution of the Act (s. 6); to make inquiries preliminary to the application of the Act by order in council or provisional order (ss. 9, 10); to make provisional orders for the application of the Act, or to report to the Queen previously to its application by order in council (*see* note, *ante*, p. 2) as the case may require (s. 10); to make provisional orders for amending any former provisional order, or for altering or extending districts (s. 141, p. 193); to approve or disapprove of the removal of the local surveyor (s. 37); to approve or disapprove of the appointment and removal of the officer of health (s. 40); to prescribe the scale of local maps exhibiting a system of sewerage (s. 41); to regulate the decision of the local boards with respect to the establishment of noxious and offensive trades (s. 64); and with respect to the level and width of new streets (s. 62); to regulate contracts for pleasure grounds (s. 74), and supplies of water (s. 75); to certify as to the terms upon which water companies ought to supply water to the local boards (s. 75); to certify with respect to surcharged burial grounds (s. 82); to regulate the terms upon which water may be supplied under the Act to the universities of Oxford and Cambridge (s. 93); to settle disputes as to the quota of the new rates to be contributed by those universities (s. 105); to regulate the mortgage of rates (s. 119); and, lastly, to regulate the decisions of the local board with respect to the manner of charging expenses incurred by those boards in respect to the making of house drains and other private improvements (s. 119). By s. 149 all consents, &c. of the general board are required to be in writing.

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by this Act may be exercised and executed by any two members thereof; and during any vacancy in the said board the continuing members or member thereof may act as if no vacancy had occurred (*s*):

Board to continue only for five years.

Provided always, that the said general board of health shall be continued only for five years next after the day of the passing of this Act, and thenceforth until the end of the then next session of parliament, and no longer.

General board may appoint a secretary, clerks, and servants.

V. And be it enacted, that the said board may from time to time appoint a secretary and such clerks and servants as they, subject to the approval of the commissioners of her Majesty's treasury, may deem necessary for the purposes of this Act; and every person so appointed shall be removable at the pleasure of the said board;

Board to have a seal, and documents sealed by it to be evidence.

And the said board shall cause to be made a seal for their use in the execution of this Act, and documents or copies of documents purporting to proceed from them, and to be signed by any two or more of them, and to be sealed or stamped with such seal,

(*s*) By the Nuisances Removal and Diseases Prevention Act, 1848, s. 11 (*see* post, p. 229), the Crown is empowered to appoint (but only for the purposes of that Act, and during the continuance of an order of privy council for putting in force certain provisions for guarding against formidable diseases), a medical member of the general board in addition to the members to be appointed under the Public Health Act. The orders, directions, and regulations of the board under that Act may be made under the seal of the board, and the hands of two or more members thereof. *See* ss. 5, 10, *post*, pp. 222, 226.

shall be received as *primâ facie* evidence in all courts and places whatsoever. 11 & 12 Vict. c. 63.

VI. And be it enacted, that the general board of health may from time to time appoint so many proper persons as they, subject to the approval of the commissioners of her Majesty's treasury, may deem necessary, to be superintending inspectors for the purposes of this Act; and every person so appointed shall have all the powers, duties, and liabilities vested in or imposed upon any superintending inspector by this Act, and shall assist in the superintendence and execution of this Act, when, where, and in such manner as the said board shall direct, and shall be removable at their pleasure (*t*). Superintending inspectors may be appointed by the general board.

VII. And be it enacted, that there shall be paid to such one of the members of the general board of health, not being the president, as her Majesty shall direct, and to the said secretary, clerks, and servants, such salaries or wages, and to the said superintending inspectors such allowances, as shall from time to time be appointed by the commissioners of her Majesty's treasury, out of any monies which may from time to time be provided by parliament for that purpose (*u*): Treasury to fix salaries, &c. to one member of the general board, and to the secretary, superintending inspectors, &c.

(*t*) By section 121 (*post*, pp. 169, 170), the inspectors so appointed may summon witnesses and examine them on oath during and for the purposes of any inquiry under the Act.

(*u*) By a standing order of the House of Commons, dated March, 29, 1707, all bills for granting money must be consi-

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Allowance to inspectors not to exceed three guineas a day, exclusive of travelling expenses.

Provided always, that the allowance to a superintending inspector shall not exceed the sum of three pounds three shillings for every day he shall be actually employed or travelling in the performance of the duties of his office; provided also, that the commissioners of her Majesty's treasury may allow to any superintending inspector such reasonable travelling and other expenses as may be incurred by him in the performance of the duties of his office under this Act, in addition to his said allowance (*v*).

Preliminary Inquiry.

VIII. And be it enacted, that from time to time after the passing of this Act,—

Upon petition of one tenth of the inhabitants of any city, &c.,

Upon the petition of not less than one tenth of the inhabitants rated to the relief of the poor of any city, town, borough, parish, or place having a known or defined boundary, not being less than thirty in the whole;

or, without petition, in cities, &c. where, upon the registrar general's, returns deaths appear to be above a cer-

Or, where it shall appear or can be ascertained from the last return for the time being made up by the registrar general of births, marriages, and deaths from the deaths registered in a period of not less than seven years that the number of

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dered, in the first instance, in a committee of the whole house, but when provision is made according to the form of this clause, the bill containing it is not within the meaning of the order. In fact, no money is granted by the present clause, but it amounts to a pledge that parliament will make the necessary grants from time to time.

(*v*) The Inclosure Act (8 & 9 Vict. c. 118, s. 6), contains a similar provision with respect to the payment of assistant commissioners.

deaths annually in any city, town, borough, parish, or place during the period in respect whereof such return shall have been made have on an average exceeded the proportion of twenty-three to a thousand of the population of such city, town, borough, parish or place (*w*) ; 11 & 12 Vict. c. 63. tain proportion,—

(*w*) This section regulates the mode of originating proceedings with a view to the application of the whole or any part of the Act, except section 50, which as before observed (*ante*, note pp. 2, 3), is not governed by the ordinary machinery of the Act.

The section authorizes the general board of health to institute a preliminary inquiry, either upon petition from the respective localities, or without petition upon returns of the registrar general showing excessive mortality.

With respect to inquiries instituted upon petition :—

1. The petition must be for a general inquiry, and not for an inquiry as to the expediency of applying a portion only of the Act.
2. The petitioners must be at least one tenth in number of such of the resident inhabitants of the city, &c. from which the petition proceeds as are rated to the relief of the poor in respect of property situate in the same city, &c.; but inasmuch as there may be some difficulty in ascertaining the number of *resident* rate-payers, it will be advisable that the petitioners should consist of one tenth in number of all those whose names appear upon the last poor-rate for the time being. The word "inhabitants" has been sometimes held to include occupiers of property, whether they be resident or not; but, upon reference to subsequent parts of this section and to section 50, in which the word "inhabitants" is again used, it is clear that resident rate-payers alone are within the purview of the Act.
3. The petitioners must always be at least thirty in number, although that number exceed one tenth of the rated inhabitants. (*See next page.*)

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General board may direct local and public inquiry by superintending inspector,

The general board of health may, if and when they shall think fit, direct a superintending inspector to visit such city, town, borough, parish, or place, and

4. The petition must proceed from certain limits, namely, from a city, town, borough, or parish, or a place having a known or defined boundary; but such limits do not necessarily govern the boundaries of a district formed for the purposes of the Act. A liberty, precinct, township, or other district known to the law and not constituted merely for a particular purpose, and places having a reputed boundary, may petition under the words "place having a known or defined boundary." Those words were introduced in committee in the House of Commons with a view of confining the petition and inquiry to some given spot; and in support of the amendment it was contended that the word "place" alone would apply to any undefined area having only a scattered population.

With respect to inquiries instituted without petition upon the returns of the registrar general:—

1. The returns upon which the inquiry is instituted must be made up from the deaths registered in a period of not less than seven years.
2. The returns must be the last for the time being.
3. They must show that within certain limits, viz., within a city, town, borough, or parish, or a place having a known or defined boundary (*see* supra), and,—
4. On an average during the period in respect of which the returns are made,—
5. The deaths have exceeded the proportion of twenty-three to a thousand of the population within the same limits.

An appendix to the registrar general's ninth annual report contains returns showing the annual rate of mortality at sixteen different ages in the registration districts in England. The calculations are made on the deaths registered under the Act for registering births, deaths, and marriages (6 & 7 Will. 4, c. 86), in the seven years ending December 31st, 1844, and on the population enumerated at the last census in 1841. The mortality is given separately for all the principal town districts. Some of these districts are conterminous with the par-

to make public inquiry, and to examine witnesses, as to 11 & 12 Vict. c. 63.

with a view to the application of the whole or part of the Act, by order in council or provisional order.

The sewerage, drainage, and supply of water;

The state of the burial grounds (*w*);

The number and sanitary condition of the inhabitants;—and

As to any local Acts of parliament in force within such city, town, borough, parish, or place, for paving, lighting, cleansing, watching, regulating, supplying with water, or improving the same, or having relation to the purposes of this Act;—also

As to the natural drainage areas;

And the existing municipal, parochial, or other local boundaries, and the boundaries which may be most advantageously adopted (*x*) for the purposes of this Act;

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liamentary or municipal boroughs; others include surrounding parishes; but probably there will be little difficulty in making the returns available, as England is divided into 2,189 sub-districts, for any one of which the registrar general has the means of calculating the rate of mortality. For these particulars with respect to the appendix referred to (which is not yet published) the Editor is indebted to a communication with which he has been favoured by the registrar general.

It remains to be observed, that if the inquiry be instituted without petition, the Act can be applied only by provisional order of the general board and the special sanction of parliament (s. 10, *post*, pp. 25, 26).

(*w*) The provisions of s. 82, *post*, pp. 128, 129, requiring that notice shall be given to the bishop of the diocese, are applicable only to proceedings with a view to prohibiting interment in some particular burial ground *after a "district" has been formed.*

(*x*) The boundaries of the city, &c. from which a petition proceeds do not necessarily govern the boundaries of a district formed for the purposes of the Act; it being one main princi-

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And as to any other matters in respect whereof the said board may desire to be informed, for the purpose of enabling them to judge of the propriety of reporting to her Majesty, or making a provisional order, as hereinafter mentioned (*y*).

Inspector to give fourteen days' notice of such inquiry, by advertisement, &c.,

IX. And be it enacted, that before proceeding upon such inquiry the said inspector shall give fourteen days' notice of his intention to make the same (*z*), and of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of such inquiry,—

By advertisement in some one or more of the public newspapers usually circulated in the parts to which the inquiry will relate;

And by causing such notice to be affixed on the doors of the principal churches, chapels, public buildings, and places where public notices are usually affixed within such parts, and in such other manner as may appear to the said inspector to be necessary:

And so soon as can be after the completion of such inquiry, he shall report in writing to the general

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ple of the statute that "districts" may, if necessary, be formed so as to correspond with the areas for drainage.

(*y*) *See* section 10, pp. 24, 25, 26. Districts may be formed for all or any of the purposes of the Act, but the preliminary inquiry must in all cases be made with respect to the several matters enumerated in s. 8.

(*z*) The inspector's power to summon witnesses and call for documents is regulated by s. 121, *post*, pp. 169, 170.

board of health, in such manner as they may direct, upon the several matters with respect to which he has been directed to inquire as aforesaid, and upon any other matters with respect to which he may deem it expedient to report for the purposes of this Act:

and to report to the general board.

And if upon such report it appear to the said general board that the boundaries which may be most advantageously adopted for the purposes of this Act are not the same (*a*) as those of the city, town, borough, parish, or place with respect to which inquiry has been made, they shall cause the same or some other superintending inspector to visit the parts within the boundaries proposed to be adopted for the purposes of this Act, and (after having given such notice as is hereinbefore prescribed) to hear all persons desirous of being heard before him upon the subject of the said report, and to make such further inquiry and report to the said board as they may direct:

Further inquiry and report, if it appear that boundaries different from those of the city, &c. originally visited ought to be adopted.

(*a*) The Act contemplates the adoption of extended boundaries for the purpose of obtaining proper areas and outfalls for drainage, and the main object of this provision is to secure inquiry in parts *beyond* the boundaries of the place, &c., in which the first inquiry is made. But, wherever it is proposed to depart in any manner from the boundaries of the place, &c., in which the first inquiry is made, whether by excluding parts already within such boundaries, or by including parts not already within them, further inquiry and report must be made in the manner prescribed; and this is not unreasonable, as any departure whatever from the recognized boundaries must always, to some extent, alter the distribution of local burthens.

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And upon the presentation of such report or further report, the said board shall cause copies thereof respectively to be published—

Reports to be published in the locality,

In the parts to which such report or further report respectively relate, in such manner as they may direct;

and to be deposited with

and shall also cause other copies thereof respectively to be deposited—

town clerks;

With the town clerk of any corporate borough affected thereby;

clerks under local Acts;

And with the clerk to the commissioners or trustees acting under any local Act of parliament in force within such parts for lighting, paving, cleansing, watching, regulating, supplying with water, or improving such parts, or any of them, or in anywise relating to the purposes of this Act;

clerks to justices;

And with the clerk to the justices acting for any petty sessional division in which such parts may be;

clerks to boards of guardians;

And with the clerk of the board of guardians of the union or parish, the whole or part of which may be affected thereby:

churchwardens, and overseers;

And if such report or further report relate to parts not being within any corporate borough, the said board shall cause other copies of the same to be deposited—

With the churchwardens or overseers of the poor of any parish in which such parts or any of them may be:

And the copies so published or deposited shall be

accompanied by a notice, stating that within a certain time, not being less than one month from the time of such publication and deposit, written statements may be forwarded to the said board with respect to any matter contained in or omitted from the said report or further report, or any amendment proposed to be made therein; and all such statements shall be deposited—

and to be accompanied by notice that statements may be forwarded to general board.

Statements so forwarded to be also deposited, and, with the reports, to be deposited,

With such town clerk, clerk to justices, clerk to the board of guardians, and with such churchwardens or overseers respectively (*b*), in like manner as the said copies;

and to be open to inspection.

And shall, together with such copies, be open to public inspection from the hour of eleven in the forenoon till the hour of three in the afternoon every day during the time specified in the last-mentioned notice, Sundays, Christmas Days, Good Fridays, and days appointed for general fasts or thanksgivings only excepted:

Penalties for refusing to receive documents, &c.

And any town clerk, clerk to justices, clerk to the board of guardians, churchwardens, or overseers (*c*) who shall refuse to receive any document or copy of any document directed to be deposited with him or them as aforesaid, or to allow such inspection, shall

(*b*) Clerks to commissioners acting under local Acts are designedly omitted from this part of the clause. Copies of the inspectors' reports are required to be deposited with them merely by way of notice previously to putting in force provisions by which the commissioners' interests may be affected. *See* ss. 10, 32, *post*, pp. 24, 61, 62.

(*c*) Clerks to local improvement commissioners, &c., are here designedly omitted. *See* the last note.

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be liable, for every such offence, to a penalty not exceeding five pounds:

Additional inquiry and report may be directed in any case.

And after the expiration of such last-mentioned notice the said board may, if they think fit, direct such further inquiry and report as to them may seem necessary and proper.

Application of the Act.

Application of the Act by order in council.

X. And be it enacted, that if after such inquiry or further inquiry as aforesaid it appear to the said general board of health to be expedient that this Act or any part thereof should be applied (*c*) to the (*d*) city, town, borough, parish, or place with respect to which inquiry has been made upon the petition of such inhabitants as aforesaid, and within the same boundaries as those of such city, town, borough, parish, or place, and within which there is no local Act of parliament in force for paving, lighting (otherwise than for the profit of proprietors or shareholders) (*e*), cleansing, watching, regulating, supplying with water,

(*c*) *See* ante, p. 3, note (*g*).

(*d*) The clause will be more easily understood by reading the word "any" instead of the word "the." That this is the correct reading see the language, *post*, p, 26, l. 1.

(*e*) This exception applies only to "lighting;" but in order to make the matter still clearer, the select committee of the House of Lords transposed the word "paving," so that it should be read immediately after the exception, and before the word "cleansing." In the amended copies of the bill subsequently printed the word "paving" was transposed accordingly; but in consequence of the amendment not having been marked in the usual manner, it was overlooked in making out the amendment paper, and consequently the word remains in the same position as when the bill left the Commons.

or improving such city, town, borough, parish, or place, or any part thereof, or in anywise relating to the purposes of this Act (*f*), they shall report to her Majesty accordingly (*g*); and at any time after presentation of such report it shall be lawful for her Majesty, by and with the advice of her privy council, to order (*h*) that this Act or any part thereof shall be applied to and be put in full force and operation within such city, town, borough, parish, or place: 11 & 12 Vict. c. 63.

Application of the Act by provisional order of general board.

And if after such inquiry or further inquiry as aforesaid it appear to the said general board to be expedient that this Act, or any part thereof, should be put in force—

(*f*) In order, therefore, that a district for the purposes of the Act may be constituted by order in council,—

1. The preliminary inquiry (ss. 8, 9) must have been moved upon petition, according to the first sentence of s. 8, (p. 16).
2. The boundaries of the district must be identical with those of the city, &c., petitioning.
3. There must not be any local Act in force within the boundaries for any of the purposes specified in the Act.

(*g*) By s. 141 orders in council may be amended, but not so as to extend a district. If extension of district be necessary, recourse must be had to a provisional order. By s. 142 orders in council are to be in force from a day to be named therein, and are to be published in the London Gazette.

(*h*) Whenever a district is constituted by order in council (except in the case of a district exclusively consisting of the whole or part of a corporate borough), the following matters relating to the election of the local board must appear in the order:—

1. The number of persons to be elected (s. 13, p. 37).
2. The day of the first election (s. 13, p. 39).

Within boundaries not being the same as those of the city, town, borough, parish, or place from which the said petition proceeded,—

Or within boundaries where no petition has been presented from such inhabitants as aforesaid,—

Or within any city, town, borough, parish, or place in which any such local Act of parliament as aforesaid is in force,—

Contents of provisional order: the order may repeal, alter, or extend local Acts, &c.

They shall make a provisional order under their hands and seal of office accordingly, with such provisions, regulations, conditions and restrictions with respect to the application and execution of this Act, or any part thereof, and with respect to any such local Act (*i*), and the repeal, alteration, extension, or future execution of the same, and in all respects

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3. The day in each year on which one-third of the members are to go out of office (s. 13, p. 39).
4. The proportion to go out of office annually, when the number of the board is not divisible by three (s. 13, p. 39).
5. The qualification of members (s. 16, p. 42).
6. The appointment of a person to conduct the first election, and another to act in case of his absence, or inability or refusal to act (s. 21, pp. 51, 52).

By section 14 the number of persons may be regulated from time to time by order in council, according to the size and circumstances of each district; and by s. 141 any order in council may be amended by a subsequent order. But the boundaries of a district cannot in any case be altered without a provisional order of the general board of health sanctioned by parliament (s. 141, p. 193).

(*i*) See the exception *infra* (in this section) with respect to water companies' Acts (p. 29).

whatsoever as they may think necessary under all the circumstances of the case (*k*): 11 & 12 Vict. c. 63, s. 10.

And such provisional order shall be published— Provisional order to be published

In the parts to which the same relates in such manner as the said general board may direct;

(*k*) Whenever a district is constituted by provisional order (except in the case of a district exclusively consisting of the whole or part of one corporate borough), the following matters relating to the constitution of the local board must appear in the order, or such of them as the nature of the district may require:—

1. The number of persons to be selected by any town council (s. 12, pp. 34, 35).
2. The number of persons to be selected by any town council (s. 12, p. 35), and the number to be elected by owners of property and rate-payers (s. 13, p. 37).
3. The day in each year on which one-third of the elected members are to go out of office (s. 13, p. 39.)
4. The number of elected members to go out of office annually, when the whole number elected is not divisible by three (s. 13, p. 39).
5. The day on which members elected for part of a district are to go out of office in each year, when the number to be so elected is less than three (s. 13, p. 39).
6. The qualification of elected members (s. 16, p. 42).
7. The appointment of a person to conduct the first election of elected members, and another person to act in case of his absence, or inability or refusal to act (s. 21, pp. 51, 52).

The day of the first selection or election is to be fixed by the special Act confirming the provisional order (ss. 12, 13; pp. 36, 38).

By section 14 (p. 40) the number of members may be regulated from time to time by any subsequent provisional order, according to the size and circumstances of the district; and by s. 141 (p. 193) any provisional order may be amended, or the boundaries of a district altered or extended in the same manner.

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And shall be deposited—

With the town clerk of any corporate borough affected thereby,—

and deposited with town clerks; clerks to improvement commissioners; clerks to justices;

And with the clerk to the commissioners or trustees acting under any such local Act,—

Also with the clerk to the justices acting for any petty sessional division in which such parts may be,—

clerks to guardians:

And with the clerk of the board of guardians of the union or parish, the whole or part of which may be affected thereby;

churchwardens, &c.

And if such provisional order relate to parts not being within any corporate borough, the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts, or any of them may be:

Provisional orders to be sanctioned by a public general Act:

And in case it shall be enacted by any Act of parliament hereafter to be passed, that the whole or part of any provisional order or orders of the general board of health shall be confirmed and be absolute, the whole or part of such provisional order or orders which shall be so confirmed shall be as binding and of the like force and effect as if the same had been expressly enacted by parliament, and every such Act shall be deemed a public general Act (*l*):

(*l*) The very large powers contained in this clause were introduced with a view to the consolidation of existing local improvement powers under one management, and for the purpose of preventing a conflict of local jurisdiction. The principle of the machinery is adopted from the Inclosure Act (8 & 9 Vict. c. 98), and, coupled with the provision contained

11 & 12 Vict. c. 63, s. 10.

but to be of no force until so sanctioned.

But no such provisional order shall have any force or effect, nor shall this Act or any part thereof be applied in either of the cases last aforesaid (*m*), except (*n*) for the purposes of such inquiry, further inquiry, report, or provisional order, without the previous authority of parliament;

Water companies' Acts not to be interfered with, without consent.

And no such provisional order, or any altered or amended order, shall be made with respect to any local Act of parliament under which any waterworks company is empowered to construct waterworks or supply water for their own profit, without the consent of the waterworks company empowered by such local Act first had and obtained (*o*):

Except for the purpose

Provided always, that, except for the purposes of

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in s. 141 (p. 193) for the alteration and amendment of provisional orders from time to time, it seems well calculated to relieve the labours of parliament, and to save the expense necessarily incidental to the present mode of initiating, conducting, opposing, and passing local Acts.

(*m*) That is to say, where new boundaries are adopted, or where the preliminary inquiry has been instituted without petition, or where there are no local Acts for any of the purposes enumerated at the commencement of this section (*see ante*, pp. 24, 25).

(*n*) The words, "except for the purposes of such inquiry," &c., were added in committee in the House of Commons; but they are quite unnecessary, inasmuch as the Act, &c., is not "applied" in the sense in which it is used in this and other sections until after the making of the provisional order, and the sanction thereof by parliament.

(*o*) But by s. 75 (pp. 118, 119, 120), in case the waterworks companies are unwilling to supply water for the purposes of the Act upon terms to be settled either by the general board or by arbitration, the local boards of health constituted under the Act may erect waterworks themselves.

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of main sewerage, neither different corporate boroughs, nor corporate and non-corporate parts are to be included within the same district without consent of the town councils—

main sewerage (*p*), no corporate borough or any part thereof shall be included in any district (*q*) not exclusively consisting of the whole or part of one such borough without the previous consent of the council under the common seal of the borough; but nothing herein contained shall be construed to require such consent to the constitution of a district exclusively consisting of the whole or part of one such borough for all or any of the purposes of this Act, nor to hinder or prevent the application of all or any of the provisions of this Act to parts exclusively consisting of the whole or part of one such borough, although the same parts, or any of them, may have been already included within a district for the purposes of main sewerage (*p*):

and a petition from the non-corporate parts.

Provided also, that, except for the purposes of main sewerage, no parts beyond the boundaries of a corporate borough shall be included in any district comprising the whole or part of any such borough, except upon the petition of a majority of the owners of property and rate-payers who would be qualified

(*p*) This exception is for the purpose of ensuring proper levels and outfalls for main lines of sewers (*see* 11 & 12 Vict. c. 112, s. 34), wherever it may be practicable to obtain them. The expression "main sewerage" was much insisted on; the word "main" was struck out by the House of Lords, but was restored by the Commons upon the consideration of the Lords' amendments.

(*q*) The word "district" is used in a technical sense throughout the Act. It is defined by s. 2 (p. 9) to mean the entire area, places, or parts of places comprised within the limits of any district to which this Act, or any part thereof, is applied by order in council or provisional order of the general board of health.

to vote in the election of members of a local board of health for the parts proposed to be so included (*r*); but nothing herein contained shall be construed to require such petition in order to the constitution of a district exclusively consisting of parts not within the boundaries of any such borough, nor to hinder or prevent the application of all or any of the provisions of this Act to a district exclusively consisting of such last-mentioned parts, although the same parts, or any of them, may have been already included within a district for the purposes of main sewerage (*s*). 11 & 12 Vict. c. 63, s. 10.

(*r*) This qualification is regulated by s. 20 (pp. 47-50).

(*s*) The several provisions of the Act with respect to the adoption of boundaries, when read in conjunction with these two provisos, are as follow:—

1. The boundaries of the city, &c. or place in respect of which the preliminary inquiry has been instituted *may* be the boundaries of a district for all or any of the purposes of the Act.
2. For the purposes of main sewerage a district may be formed, so as either to include within it parts beyond the boundaries of the city, &c. or place in respect of which the preliminary inquiry has been instituted, or to exclude from it parts already within those boundaries.
3. A district may be formed, regardless of local boundaries, as in case 2, for all or any of the purposes of the Act; but before a provisional order can be made for including different corporate boroughs or parts of boroughs in the same district, otherwise than for the purpose of main sewerage (*see* case 2), the consent of the councils of the respective boroughs intended to be included must be obtained; and before a provisional order can be made for including corporate and non-corporate parts in the same district, it will be necessary to obtain the consent of the town council of the boroughs or parts of boroughs intended to be included, and the petition

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Costs of preliminary inquiry, &c., to be charged upon the general district rates.

XI. And be it enacted, That from and after the making of any such order in council or the passing of any Act of parliament confirming any provisional order of the general board of health, the costs, charges, and expenses specially (*s*) incurred by or under the direction of the said general board, or of any superintending inspector, in relation to any inquiry or further inquiry as aforesaid, shall, to such extent and amount as the commissioners of Her Majesty's treasury by order under their hands may think proper to direct, become a charge upon the general district rates levied in such district under the authority of this Act (*t*), and be repaid to the said commissioners by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as shall from time to time remain unpaid (*u*).

Constitution of Local Boards of Health.

XII. And be it enacted (*v*), That in every dis-

of a majority in number of such of the owners of property and rate-payers within the non-corporate parts as would be entitled to vote at elections under the Act. *See* s. 20, pp. 47-50, *post*.

(*s*) So in the ingrossment,—not "especially."

(*t*) See *post*, s. 87, p. 136.

(*u*) If a preliminary inquiry be made, and the Act be not afterwards applied, no costs will attach to the locality in respect of which the inquiry has been made.

(*v*) The constitution of the local boards of health, as settled by this and the following clause, may be summed up thus:

trict exclusively consisting of the whole or part of 11 & 12 Vict. c. 63.

Appointment of town

1. In districts consisting of the whole or part of *one* corporate borough, the entire town council of the borough will be the local board.
2. In districts consisting of two or more corporate boroughs or of the parts of corporate boroughs, the local board will consist of the mayors for the time being of the respective boroughs and of a certain number of persons selected by the town council of each borough, either out of their own number or from persons qualified to be members of the council making the selection.
3. In districts consisting partly of corporate boroughs and partly of non-corporate parts, the local board will consist of the mayor of such borough, of a certain number of persons selected (as in case 2), by the town council of the same borough, and of persons elected by the owners of property and rate-payers in the non-corporate parts.
4. In districts not containing any part of a corporate borough, the local board will consist of persons elected by the owners of property and rate-payers in the respective districts.

But these provisions, with respect to the constitution of local boards, will not apply to parts within the jurisdiction of the Oxford and Cambridge improvement commissioners (s. 31, p. 60), nor to any district in which any local improvement commissioners or other special boards are constituted local boards of health by provisional order (ss. 10, 32, pp. 26, 61, 62). And in case any district for the purposes of the Act be afterwards constituted a corporate borough by royal charter, it will be discretionary with the crown as to whether the new town council shall be the local board (s. 33, p. 62); or, whether the board shall continue to be constituted in the same manner as before the incorporation. In all non-corporate districts, (*i. e.* wherever the *entire* town council is *not* the local board), the number of the board, and the numbers to be either selected or elected will be regulated by order in council or provisional order; and by s. 15 (p. 41), if a district be formed for the purposes of sewerage, and a smaller district be formed within it for other purposes, the

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one corporate borough (*w*),

council in districts consisting only of one corporate borough:

The mayor, aldermen, and burgesses of such borough shall be, by the council of the borough, within and for such district the local board of health under this Act;

Transaction of business, &c. in corporate districts.

And such council shall exercise and execute the powers, authorities, and duties of such local board according to the laws for the time being in force with respect to municipal corporations in England and Wales;

Selection by town council in districts consisting of two or more corporate boroughs or parts of boroughs.

And in every district exclusively consisting of two or more of such boroughs, or of one or more of such boroughs and also of part of any other such borough or boroughs, or exclusively consisting of part of two or more of such borough or (*x*) boroughs,—

The mayors for the time being of the boroughs whereof the whole or part is within such last-

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members elected to represent such separate district for sewerage purposes will be the local board for the purposes for which the separate district is formed.

(*w*) The term "corporate borough" is defined in s. 2 (p. 8) to mean any corporate borough constituted under the Municipal Corporation Act (5 & 6 Will. 4, c. 76), and any borough incorporated by charter granted or to be granted under that or any subsequent Act. Districts in which the town council is constituted the local board are referred to throughout the Act as "corporate districts" (s. 2, p. 9, "corporate district"); all other districts are referred to and included under the description of "non-corporate districts" (s. 2, p. 9, "non-corporate district"). With respect to the appointment of the town council to be the local board where a non-corporate district, after its formation, becomes or is entirely comprised within the limits of a new corporate borough, *see* s. 33, p. 62.

(*x*) The words "borough or" ought not to have been inserted, but they do not embarrass the sense.

mentioned district, and such number of other persons as shall be fixed by such provisional order as aforesaid to be selected (*y*) by each of such councils respectively out of their own number, or from persons qualified to be councillors of the borough in respect of which the selection is to be made (*z*), and shall be named and selected by such councils accordingly, shall, within and for such district, be the local board of health under this Act: 11 & 12 Vict. c. 63, s. 12.

Selection by town council and election by rate-payers.

And in every district comprising the whole or part of any such borough or boroughs, and also parts not within the boundaries of any such borough,— In districts consisting partly of corporate and partly non-corporate parts.

The mayor or mayors for the time being of the borough or boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed by such provisional order to be selected by such

(*y*) The terms "selected" and "selection" in this and other sections, are used for the purpose of distinguishing the members chosen by a town council, from persons who become members of the local board *ex officio*, as mayors for the time being, and (in the case of "corporate districts") all the members of the town council; and also for the purpose of distinguishing the members so chosen, from members elected by owners and rate-payers. The terms "elected" and "election" are used in reference to members so elected, and also with reference to their election by owners and rate-payers; and the provisions with respect to members appointed *ex officio* by the terms of the Act, are referred to as provisions with respect to the "appointment" of members, &c. *See* the three terms "appointment," "election," "selection," used together in ss. 31, 32, pp. 60, 62.

(*z*) The councillors' qualification is regulated by 5 & 6 Will. 4, c. 76, s. 10.

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council or each of such councils respectively out of their own number, or from the persons qualified to be councillors of the borough in respect whereof the selection is to be made, and shall be named and selected by such council or councils accordingly, shall, together with such number of persons as shall be elected as hereinafter mentioned in respect of such noncorporate parts, (*a*) be, within and for such district, the local board of health under this Act:

Day of first selection.

And the first selection by any such council in pursuance of this Act shall be made on a day to be appointed by parliament;

Duration of office of members selected by town council, out of their own number,

And each person selected by the council out of their own number shall be a member of the local board with which he is selected to act so long as he continues without re-election (*b*) to be member of the council from whom he was selected, and no longer (*c*);

otherwise than out of their own number.

And each person selected by the council otherwise than out of their own number shall be a member of the local board with which he is selected to act for one year from the date of his selection, and no longer (*d*):

(*a*) See *post*, ss. 13, 20, pp. 37, 47-50.

(*b*) If the same person be re-elected member of the council he may be again selected to be a member of the local board, *see* post, s. 14, p. 40.

(*c*) But by ss. 18, 19, p. 44, 45, 46, it is provided, that a member selected (pp. 44-46) by a town council out of their own number, or otherwise, shall in certain cases be disqualified to act as member of the local board, and that so soon as such disqualification attaches, his office as such member shall become vacant.

(*d*) *See* the last note.

11 & 12 Vict. c. 63.

Vacancies amongst selected members to be supplied.

And in case of any vacancy in the number selected some other person or persons (as the case may require) shall be selected by the council by whom the person or persons causing the vacancy was or were selected, within one month after the occurrence of the vacancy:

Meetings of councils for the purposes of selection, to be deemed meetings under 5 & 6 Will. 4, c. 76.

And the meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act for the regulation of municipal corporations in England and Wales." (*e*)

Election by Ratepayers, &c. in districts consisting partly of corporate and partly of non-corporate parts;

XIII. And be it enacted, That in every district comprising the whole or part of any corporate borough or boroughs as aforesaid, and also any part or parts not within the boundaries of any corporate borough or boroughs,—

Such number of persons, qualified as herein-after prescribed, as shall be fixed by such provisional order as aforesaid to be elected for such part or parts, or for each of such parts respectively, shall from time to time be elected in such manner and by such owners of property and rate-payers as hereinafter mentioned (*f*), to be, together with the persons selected as aforesaid in respect of the corporate parts of

(*e*) Section 79 of the Act 5 & 6 Will. 4, c. 76, regulates the notice to be given previously to meetings of the council.

(*f*) See *post*, s. 20, pp. 47-50.

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such district, and shall be, within and for such district, the local board of health under this Act:

in districts consisting only of non-corporate parts, when the Act may be applied by order in council:

And in every district not comprising the whole or part of any corporate borough or boroughs, but being a district to which this Act may be applied by order of her Majesty in council (*g*),—

Such number of persons, qualified as hereinafter prescribed in this behalf (*h*), as shall be fixed by such order in council, shall be elected, in such manner and by such owners of property and rate-payers as hereinafter mentioned (*i*), to be, and shall be, within and for such district, the local board of health under this Act:

in districts consisting only of non-corporate parts, when the Act must be applied by provisional order.

And (*k*) in every district not comprising the whole or part of any corporate borough or boroughs, and being a district to which this Act cannot be applied without the authority of parliament (*l*),—

Such number of persons, qualified as hereinafter prescribed, as shall be fixed by such provisional order as aforesaid, shall be elected, in such manner and by such owners of property and rate-payers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act:

(*g*) See *ante*, s. 10, pp. 24, 25, note (*f*); and as to the use of the term "selected," *ante*, p. 35, note (*y*).

(*h*) See s. 16, p. 42.

(*i*) See s. 20, pp. 47-50.

(*k*) See *ante*, s. 10, pp. 24, 25.

(*l*) This paragraph is the same as the last, except in so far as it makes provision for proceeding by provisional order, instead of by order in council, in those cases where a provisional order would be the proper course of proceeding.

11 & 12 Vict. c. 63, s. 13.

Day of first election.

And the first election for any district or part of a district shall take place on a day to be appointed by order of her Majesty in council or by parliament (as the case may require):

A certain number to go out of office every year.

And one-third of the number elected for the whole or any part or parts of a district respectively shall go out of office on such day in each year subsequently to that of the first election as shall be appointed by such order in council or provisional order as aforesaid (as the case may require);

Order of going out.

And the order in which the persons first elected shall go out of office shall be regulated by each local board:

Regulations as to going out of office in particular cases.

Provided always, that if the number of persons to be elected be not divisible by three, the proportion to go out of office in each year shall be regulated by such order in council or provisional order (as the case may require) so that as nearly as may be one-third shall go out of office in each year; and if the number of persons to be elected for any part of a district be less than three, the persons elected shall go out of office on such day in each year, or at such other period, not being less than a year, as such order in council or provisional order (as the case may require) shall direct;

Duration of office of elected members.

But no person elected shall in any case continuously remain in office for more than three years (*m*):

Vacancies to be supplied

And on the days appointed for going out of office a number of persons shall be elected equal to the number of those so going out, and so many others

(*m*) But the same person may be re-elected, *see* s. 14.

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as may be necessary to complete the full number of the local board of health in respect of which the election is to be made.

Number of persons to be selected or elected to be regulated from time to time.

XIV. And be it enacted, that the number of persons to be selected or elected (*l*) for the whole or any part of a district shall from time to time be regulated by such order in council or provisional order as aforesaid, as the case may require, (due regard being had to the size and circumstances of each district), as may appear to be just and proper (*m*);

Same person may be re-elected, &c.

And that any member of the local board of health after going out of office, resigning, or otherwise ceasing to be such member, may, if otherwise qualified, be again selected or elected (as the case may require);

In case of vacancies, remaining members may act.

And in the event of any vacancy in the number of persons elected, by death, resignation, or otherwise, between the times appointed for election as aforesaid, or if at any time the said local board be without its full number of members, the remaining members shall continue and be as competent to act until the time appointed for election, or until the full number is selected or elected (as the case may require), as if no vacancy had occurred:

Persons both selected and

And if any person be both selected and elected to

(*l*) *See ante*, p. 35, note (*y*).

(*m*) The seal of the local board and the signature of *five* members are required: 1, in the case of documents tendered in evidence, s. 36; 2, in the execution of mortgages, s. 111; 3, in the making of bye-laws, s. 115; 4, in the case of consents and authorities of the board, s. 149. The number, there-

be a member of the local board of health he shall, within three days after notice thereof from the clerk, choose, or, in default of such choice, the local board of which he is so selected and elected to be member shall determine, the title in respect of which he shall serve; and immediately upon such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant.

11 & 12 Vict. c. 63.

elected, &c. to serve in respect of one title only.

XV. Provided always, and be it enacted, that if any corporate borough or part thereof be included only for the purposes of sewerage (*n*) in any district comprising any part or parts not within the boundaries of any such borough, and the last-mentioned part or parts, or any of them, be constituted a district or districts for any other purposes of this Act, the persons elected for such sewerage district shall, within and for the separate district within which they shall have been so elected, be and constitute the local board of health, in the same manner and as fully to all intents and purposes as if they had been expressly elected to constitute the same.

If part of a sewerage district be constituted a separate district for other purposes, the members elected for such part to be the local board for such separate district.

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fore, of the board in a non-corporate district must not be less than five, and any number beyond *may* be fixed from time to time by order in council or provisional order.

(*n*) This clause relates to districts formed for the purposes of "main" sewerage; *see* the proviso in s. 9, p. 30. The Metropolitan Sewers Act, 11 & 12 Vict. c. 112, s. 34, contains provisions for the formation of "sewerage districts."

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Elected members to be resident, and seised, &c. of property to a certain amount;

XVI. And be it enacted, that every person elected (*o*) as aforesaid shall at the time of his election, and so long as he shall continue in office by virtue of such election,—

Be resident within the district for which or for part of which he is elected, or within seven miles thereof, and be seised or possessed of real or personal estate, or both, to such value or amount as shall be fixed by such order in council or provisional order as aforesaid (as the case may require), within the limits next hereinafter provided;

or to be resident and assessed to the poor's rates.

Or, be so resident, and rated to the relief of the poor of some parish, township, or place of which some part is within such district or part of a district, upon such annual value as shall be fixed by such order in council or provisional order (as the case may require), within the limits next hereinafter provided:

Maximum of property and rating qualification.

Provided always, that it shall not be lawful to require that any person be seised or possessed as aforesaid to a value or amount exceeding one thousand pounds, or to require that any person be rated upon an annual value exceeding thirty pounds (*p*):

(*o*) *See ante*, p. 35, note (*y*); and s. 13, pp. 37, 38.

(*p*) The discretion with respect to the amount of property qualification is given in order that the qualification required may be regulated in each case by the circumstances of the district.

11 & 12 Vict. c. 63.

Joint property, &c. may qualify the joint owners, &c.

Provided also, that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons be jointly rated in respect of any property which if equally divided between them would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated may be elected; but the same property shall not at the same time qualify both the owner and the occupier thereof (*q*).

Declaration to be made by elected members and by certain selected members before acting.

XVII. And be it enacted, that no person elected as aforesaid, or selected by any council otherwise than out of their number (*r*), shall act as member of the local board of health (except in administering the following declaration) until he shall have made and signed before two or more other members for the district for which he is elected a declaration in writing to the effect following; (that is to say)—

"I *A. B.* do solemnly declare, that I am seised "or possessed of real or personal [*or* real and per- "sonal] estate to the value or amount of

(*q*) This is framed upon ss. 6, 7 of the Commissioners' Clauses Act, 1847 (10 & 11 Vict. c. 16).

(*r*) Members of the board, who are also members of the town council out of which they are selected, must have already made a declaration as to their property qualification, under the Act 5 & 6 Will. 4, c. 76, s. 50.

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"[*or* that I am rated to the relief of the poor of
" upon the annual value of].
(Signed) *A. B.*"

"Made before us, *C. D.* and *E. F.*,
"members of the local board of
"health for the district of ,
"this day of ."

False declaration a misdemeanor.

And such declaration shall be made and signed by the person making the same, and shall be filed and kept by the clerk; and any person who shall falsely or corruptly make and subscribe the said declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Neglecting to make declaration;

XVIII. And be it enacted, that any person elected as aforesaid, or selected by any council otherwise than out of their own number,—

Who neglects to make and subscribe the declaration required by this Act for the space of three months next after his selection or election,—

or neglect by any selected or elected member to act for three months, to vacate office.

And any person selected or elected under this Act—

Who during three successive months is absent from all meetings and committees of the local board of health, of which he is elected or selected to be member,—

Shall be deemed to have refused to act, and shall cease to be a member of such local board, and his office as such shall thereupon become vacant (*s*).

(*s*) By the next section persons acting as members of the

11 & 12 Vict. c. 63.

Disqualifications at the time of election;

XIX. And be it enacted, that no bankrupt, insolvent, or other person not qualified as aforesaid shall be capable of being elected as aforesaid (*t*):

after being elected or selected by councils otherwise than out of their body;

Bankruptcy, &c.

And if any person, after being so elected or selected by any council otherwise than out of their own number (*u*)—

Shall lose or discontinue to hold his qualification, or shall be declared bankrupt, or shall apply to take the benefit of any Act for the relief or protection of insolvent debtors, or shall compound with his creditors,—

after being elected or selected in any case.

Or if any member selected or elected under this Act (*v*)—

Shall accept or hold any office or place of profit under the local board of health of which he is

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local board, after being disabled from so acting, are liable to a penalty of 50*l*.

(*t*) The disqualifications of selected members at the time of their selection by a town council, will be regulated by the general law for the time being applicable to municipal corporations. *See* 5 & 6 Will. 4, c. 76, s. 28.

(*u*) The case of members selected by town councils out of their own number, or who are members of the local board *ex officio*, is provided for by s. 52 of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 52, by which any mayor, alderman, or councillor, who shall be "declared bankrupt, or shall apply to take the benefit of any Act for the relief of insolvent debtors, or shall compound by deed with his creditors," is disabled from continuing in office. The clause in the text was originally framed in the same terms, but the words "or protection" were inserted, and the words "by deed" struck out, in committee in the House of Commons.

(*v*) This clause applies to all elected members, and to all members selected by any town council, whether out of their own number or otherwise.

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Accepting office, &c. under the board, or being interested in contracts.

member, or shall in any manner be concerned in any bargain or contract entered into by such board, or participate in the profit thereof, or of any work done under the authority of this Act in or for the district for which he is member,—

Then and in every such case such person shall, except in the cases next hereinafter provided, cease to be such member, and his office as such shall thereupon become vacant:

Penalty for acting without qualification, &c.

And any person who, not being duly qualified to act as member of the said local board, or who has not made and subscribed the declaration required of him by this Act, or who after being disqualified or disabled (*w*) from acting by any provision of this Act shall so act, shall for every such offence be liable to a penalty of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; and in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member; and the burthen of proving qualification, and the making and subscription of the declaration, or negativing disqualification, by reason of non-residence, or not being seised or possessed of the

Proof, &c. in actions for penalties.

(*w*) In the case of local boards consisting of the entire town council (as in case of corporate districts), and in the case of *ex officio* members of the town council (as mayors for the time being), the disqualifications prescribed by this clause will be regulated by the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, ss. 28, 50.

requisite real or personal estate, or both, shall be upon the defendant:

Proprietors of public works, &c. not to be disqualified.

Provided always, that no person, being a proprietor, shareholder, or member of any company or concern established for the supply of water, or for the carrying on of any other works of a like public nature, shall be disabled from being, continuing, or acting as member of the said local board by reason of any contract entered into between such company or concern and such board; but no such person shall vote as member of the said local board upon any question in which such company or concern is interested:

but must not vote in certain cases.

Acts of disqualified persons to be valid if done before conviction.

Provided also, that all acts and proceedings of any person disqualified, disabled, or not duly qualified as aforesaid, or who has not made and subscribed the said declaration, shall, if done previously to the recovery of the last-mentioned penalty, be valid and effectual to all intents and purposes whatsoever (*x*).

Election of Local Boards.

XX. And be it enacted, that at every such election as aforesaid the rate-payers (*y*) in respect of property in the district or part of a district for which the election is held, and the owners of such property, shall be entitled to vote according to the scale following; (that is to say) (*z*),—

Qualification of electors.

(*x*) As to defects in election or selection, *see* post, s. 29, p. 59.

(*y*) *See infra*, p. 49, for the definition of "rate-payer" for the purpose of voting.

(*z*) This scale is prescribed by the statute 7 & 8 Vict. c. 101, s. 14, with respect to the election of guardians of the poor.

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Scale of voting.

If the property in respect of which the person is entitled to vote be rated upon a rateable value of less than fifty pounds he shall have one vote;

If such rateable value amount to fifty pounds and be less than one hundred pounds he shall have two votes;

If it amount to one hundred pounds and be less than one hundred and fifty pounds, he shall have three votes;

If it amount to one hundred and fifty pounds and be less than two hundred pounds he shall have four votes;

If it amount to two hundred pounds and be less than two hundred and fifty pounds he shall have five votes;

And if it amount to or exceed two hundred and fifty pounds he shall have six votes:

Voting both as owner and occupier.

And any person who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation (*a*):

Manner of collecting and returning votes, &c.

And the votes shall be given, taken, collected, and returned according to the directions hereinafter contained (*b*); and the majority of the votes actually

(*a*) This rule also prevails upon the election of poor law guardians under the Act 4 & 5 Will. 4, c. 76, s. 40.

(*b*) *See* post, ss. 21-28, pp. 51-58; the directions referred to are founded upon the Poor Law Amendment Act, 4 & 5 Will. 4, c. 76, s. 1.

collected and returned shall be binding on the district or part of a district for which the election is had; and whosoever shall not vote or shall not comply with such directions shall be omitted in the calculation of votes, and be deemed to have had no vote: 11 & 12 Vict. c. 68, s. 20.

Provided always, (*c*) that the word "owner" and "owners," when used in this Act in relation to the right of voting at any election under this Act, shall respectively be construed to mean any person or persons for the time being in the actual occupation of any kind of property rateable to the relief of the poor, and not let to him or them at a rack rent, or any person or persons receiving, either on his or their own account, or as mortgagee or mortgagees, or other incumbrancer or incumbrancers, in possession, the rack rent of any such property: Meaning of the words "owner" and "owners" in relation to the right of voting.

And no person shall be deemed a rate-payer or be entitled to vote as such at any such election unless— No person to be deemed a "rate-payer" for election purposes unless he has paid certain rates.

He shall have been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote,—

And shall have also paid all rates made upon him for the relief of the poor in such district or part of a district for the period of one whole year,—

And shall have also paid all such rates, and all rates due from him under this Act, before that day, in such district or part of a district, except rates

(*c*) From the Poor Law Amendment Act 4 & 5 Will. 4, c. 76, s. 109. *See* the definition of rack-rent in s. 2, p. 6.

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which shall have been made or become due within the six months immediately preceding:

Owners being corporations aggregate, &c. to vote by proxy, and as one owner.

Provided also, that in case of property belonging to a corporation aggregate, or to a joint stock or other company, or to any body of proprietors or undertakers, such corporation, company, body of proprietors or undertakers respectively, shall be deemed to be one owner for the purpose of voting under this Act, and shall vote by proxy appointed in writing (*d*) under the common seal (in case of a corporation), or (in any other case) under the hands of three directors or other persons in the direction or management of the company or concern; and no member of such corporation, nor any proprietor or person interested in such company or concern, shall be entitled to vote individually as owner in respect of such property:

Notice of owners' qualification fourteen days previously to election.

And no owner whosoever shall be entitled to vote as such, unless, fourteen days at least previously to the day of tendering his vote, he shall have delivered to the clerk, or (in case of the first election) to such person within the district in which the qualification to vote is situate as shall be directed by such order in council or provisional order (as the case may require), a statement in writing of his name and address, (*e*) and containing a description of the nature of his interest or estate in the property giving the

(*d*) At the election of guardians of the poor all owners may vote by proxy under the Act 4 & 5 Will. 4, c. 76, s. 40, but, under the statute in the text, all owners must vote in person except in the cases enumerated in this proviso.

(*e*) This may be an address either within or out of the parts for which the election is held; but, in order that voting papers

qualification, and a statement of the amount of all rent-service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay the same; and no such corporation aggregate, joint stock or other company, body of proprietors or undertakers, shall be entitled to vote unless such statement contain the name and address of the proxy appointed, and a true copy of the appointment of such proxy. 11 & 12 Vict. c. 63.

First election to be conducted by a person specially appointed; subsequent elections, by the chairman of the local boards.

XXI. And be it enacted (*f*), That at every election by owners of property and rate-payers under this Act the chairman of the local board of health, or, in case of the first election, such person as shall be appointed by order of her Majesty in council, or by provisional order of the general board of health, (as the case may require), shall have the powers and perform the duties vested in or imposed upon the said chairman by this Act in relation to any such election, and shall perform all other duties which it may be requisite for him to perform in conducting and completing elections under this Act:

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may be delivered to the voter under s. 24, p. 55, *notice* of an address within those parts should in all cases be given.

(*f*) Sections 21 to 27 inclusive, are adapted from the first 27 articles of the general consolidated order of the poor law commissioners, dated July 24th, 1847. Those articles provide, that the clerk to the guardians shall be the officer to conduct the elections; but the clauses in the present Act require that duty to be performed by the chairman, in accordance with an amendment of the House of Lords.

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Another person to be appointed to act in case the person appointed, or the chairman be unable to act, &c.

And in case the office of chairman shall be vacant at the time when any such power or duty must be executed or performed, or in case the chairman or person appointed as last aforesaid, from illness or other sufficient cause, shall be unable to exercise or discharge such powers or duties, or shall be absent, or shall refuse to act, some other person who shall be appointed (in case of the first election) by such order in council or provisional order, or (in any other case), by the local board of health, shall exercise or perform such of the said powers and duties as then remain to be exercised or performed (*ff*);

Assistants to be appointed.

And the said local board, or (in case of the first election) the person appointed by such order in council or provisional order, shall, before or during the election, appoint a competent number of persons to assist and attend upon the chairman or the person so appointed (as the case may require) in conducting and completing the same.

Books, &c. relating to the election of guardians, and poor-rate books to be open to inspection, &c. for election purposes.

XXII. And be it enacted, That the clerk of the board of guardians of any union, and the overseers or other officers of every parish, wholly or in part within the parts for which any such election shall be held, and having the custody of any books or papers relating to the election of guardians of the poor, or the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the said

(*ff*) The appointment of chairman is regulated by s. 24, p. 64.

chairman, or (in case of the first election) by any person appointed by such order in council or provisional order as aforesaid; 11 & 12 Vict. c. 63.

And the said chairman may, if he shall see fit, cause to be made an alphabetical list of the persons entitled to vote at the election. Alphabetical list of voters may be made.

XXIII. And be it enacted, That the said chairman shall, before every such election, prepare, sign, and publish (*g*) a notice, which shall contain the particulars following; that is to say,— Notice previously to election;

The number and qualification of the persons to be elected; particulars thereof.

The persons by whom and the places where the nomination papers hereinafter mentioned (*h*) are to be received, and the last day on which they are to be sent;

The mode of voting in case of a contest and the days on which the voting papers will be delivered and collected, and the time and place for the examination and casting up of the votes:

And he shall also cause such notice to be affixed on such places in the parts for which the election is to be held as are ordinarily made use of for affixing thereon notices of parochial business: to be affixed on church doors, &c.

Provided always, that whenever the day appointed for the performance of any act in relation to any such election shall be on a Sunday, Christmas Day, Postponement of election days in case of Sundays, &c.

(*g*) The mode of publication is pointed out lower down in the same section (l. 21 in this page).

(*h*) *See* post, s. 24, p. 54.

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or Good Friday, or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following.

Nomination of candidates; Who may be nominated.

XXIV. And be it enacted, That any person entitled to vote may nominate for the office of member of the local board of health himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected);

Form of nomination.

And every such nomination shall be in writing, and shall state the names, residence, calling, or quality of the persons nominated, and shall be signed by the party nominating, and be sent to the said chairman:

Proceedings upon delivery of nomination papers.

And if the number of persons nominated shall be the same or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed to be elected, and shall be certified accordingly by the said chairman under his hand; but if the number so nominated exceed the number to be elected, the said chairman shall cause voting papers, in the form contained in the schedule (A.) to this Act annexed (*i*), to be prepared and filled up, and shall insert therein the names of all the persons nominated, in the order in which the nomination papers were received, but it shall not be necessary to insert more than once the name of any person nominated;

Voting papers to be prepared, &c. in case of contest,

(*i*) Post, p. 204.

11 & 12 Vict. c. 63.

and delivered at the address or residence of the voters.

And the said chairman shall, three days before the day of election, cause one of such voting papers to be delivered by the persons appointed for that purpose to the address in the parts for which the election is to be held of each owner and proxy (*k*), and at the residence of each rate-payer entitled to vote therein:

Proceedings in case persons nominated refuse to serve.

Provided always, that if any person put in nomination shall tender to the officer conducting the election his refusal in writing to serve as a member of the local board of health, and if in consequence of such refusal the number of persons nominated shall be the same as or less than the number of persons to be elected, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be elected, and shall be certified as such by the chairman under his hand.

Signature of voting papers in general;

XXV. And be it enacted, That each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper;

in case of voting by proxy;

And when any person votes as a proxy he shall in like manner write his own initials, and sign his own name, and state also in writing the name of the

(*k*) In order to entitle a person to vote as owner he must have given the fourteen days' notice required by s. 20, p. 50.

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corporation, company, or body of proprietors or undertakers for which he is proxy:

in case of marksman.

Provided always, that if any voter cannot write he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

Voting papers to be collected as chairman shall direct;

XXVI. And be it enacted, That the said chairman shall cause the voting papers to be collected on the day of election by the persons appointed or employed for the purpose in such manner as he shall direct;

but must be collected at voter's address or residence,

But no voting paper shall be received or admitted unless the same have been delivered at the address or residence as aforesaid (*l*) of the voter within the parts for which the election is had, nor unless the same be collected by the persons appointed or employed for that purpose, except as next hereinafter provided:

except where they have not been duly delivered,

Provided always, that if any person qualified to vote shall not have received a voting paper as aforesaid, he shall, on application before that

(*l*) That is to say, the *address* of owners and proxies, and the *residence* of rate-payers. See the proviso to s. 24, *ante*, p. 55. The address of an owner or proxy *need not* be his place of residence. This distinction between an owner's address, and a rate-payer's residence is maintained throughout; *see* ss. 20, p. 50; 24, p. 55.

day (*m*) to the said chairman, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him: 11 & 12 Vict. c. 63.

Provided also, that in case any voting paper duly delivered shall not have been collected, through the default of the said chairman, or the persons appointed or employed to receive the same, the voter in person may deliver the same to the said chairman before twelve o'clock at noon on the day, or the first day, (as the case may be,) appointed for the examination and casting up of the votes. or where they have not been collected.

XXVII. And be it enacted, that the chairman shall, on the day immediately following the day of the election, and on as many days immediately succeeding as may be necessary, attend at the office of the local board of health, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; and he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate; Examination and casting up of the votes.

And the candidates to the number to be elected who, being duly qualified, shall have obtained the Certificate of election.

(*m*) That is to say, the day of election. See commencement of the section.

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greatest number of votes, shall be deemed to be elected, and shall be certified as such by the said chairman under his hand;

Notice to candidates elected.

And to each person so elected the said chairman shall send or deliver notice of such election;

List of candidates and persons elected;

And the said Chairman shall also cause to be made a list—

Containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected;

to be signed by chairman, and certified and delivered to local board, and to be by them deposited and kept open to inspection.

And shall sign and certify the same, and shall deliver such list, together with the nomination and voting paper which he shall have received, to the local board of health at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office, and the same shall, during office hours thereat, be kept open to public inspection, together with all other documents relating to the election, for six months after the election shall have taken place, without fee or reward;

List to be printed, and affixed to church doors, &c.

And the said chairman shall cause such list to be printed, and copies thereof to be affixed at the usual places for affixing notices of parochial business within the parts for which the election shall have been made.

Penalty upon chairman, &c. for

XXVIII. And be it enacted, that if the said chairman or other person charged with taking,

collecting, or returning the votes at any such election as aforesaid shall neglect or refuse to comply with any of the provisions of this Act in that behalf, he shall be liable for every such offence to a penalty not exceeding fifty pounds: 11 & 12 Vict. c. 63. neglect in conducting elections;

And any person employed for the purposes of any such election, by or under the said chairman or other person charged as aforesaid, who shall be guilty of any such neglect or refusal, shall be liable for every such offence to a penalty not exceeding five pounds. upon assistants.

XXIX. And be it enacted, that all proceedings of the local board of health, and of any person acting as member or under the authority thereof, shall, notwithstanding any defect in the selection or election of such board or any member thereof, be as valid and effectual as if no such defect had ever existed (*n*). Defects in election, &c. not to invalidate proceedings.

XXX. And be it enacted, that the necessary expenses attendant upon any such election as aforesaid, and such reasonable remuneration to returning officers and other persons for services performed or expenses incurred by them in relation thereto, as shall from time to time be allowed by the local board of health in that behalf, shall be paid out of Expenses of elections to be defrayed out of general district rates.

(*n*) As to proceedings of members disqualified, or disabled from acting, see the last proviso, s. 19, p. 47.

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the general district rates (*o*) to be levied under this Act.

The Oxford and Cambridge improvement commissioners acting under 52 Geo. 3, c. lxxii. (in the case of Oxford), and 34 Geo. 3, c. iv. (in the case of Cambridge), to be the local board in certain districts.

XXXI. Provided always, and be it enacted, that nothing hereinbefore contained with respect to the appointment, selection, or election (*p*) of any local board of health, or member thereof, shall apply to—

The city of Oxford, or the parts within the jurisdiction of the commissioners for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement (which commissioners are hereinafter called the Oxford commissioners);

Or to the borough of Cambridge, or the parts within the jurisdiction of the commissioners acting under an Act of the thirty-fourth year of the reign of King George the Third, for amending and enlarging the powers of a former Act of the same reign, for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within that town (which commissioners are hereinafter called the Cambridge commissioners);

(*o*) *See* section 87, *post*, p. 136.
(*p*) *See ante*, p. 35, note (*y*).

And if the city of Oxford, or the parts within the first-mentioned jurisdiction, become a district under this Act, the same shall be called the Oxford district, and the said Oxford commissioners for the time being shall, within and for such district, be the local board of health under this Act; 11 & 12 Vict. c. 63.

And if the borough of Cambridge, or the parts comprised within the jurisdiction secondly above mentioned, become a district under this Act, the same shall be called the Cambridge district, and the said Cambridge commissioners for the time being shall, within and for such district, be the local board of health under this Act (*q*).

XXXII. And be it declared (*r*) and enacted, Declaratory clause with

(*q*) The Oxford and Cambridge districts will be "non-corporate districts," within the meaning of the Act. *See* s. 2, *ante*, p. 9.

Special provisions with respect to the Oxford and Cambridge districts are contained in the following sections:—s. 34, with respect to the quorum of the local board and the choice of chairman; s. 93, with respect to the supply of water to the universities of Oxford and Cambridge; s. 105, with respect to the quota of rates under this Act to be paid by those universities.

(*r*) This clause was added in the House of Lords, *ex abundante cautelâ*, upon the urgent petition of certain improvement commissioners, in order that there might be no possibility of doubt as to whether local improvement commissioners could be constituted the local board of health under that part of section 10 (p. 26) which enables the general board, by provisional order (subject to the sanction of parliament), to make "such provisions, regulations and restrictions, with respect to the application and execution of this Act, or any part thereof,

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In respect to the execution of the Act by local improvement commissioners in certain cases.

that whenever by any such provisional order as aforesaid the commissioners or trustees acting under any local Act of parliament are constituted the local board of health under this Act, such commissioners or trustees shall, within and for the district to which such provisional order applies, exercise and execute the powers, authorities, and duties vested in or imposed on the local board of health by this Act, and so much of this Act as relates to the appointment, election, or selection of local boards of health shall not apply to such district.

In case of non-corporate district being afterwards created, or being comprised within a new corporate borough, the new corporate body may be declared the local board of health.

XXXIII. And be it enacted, that if, after the application of this Act to any district, the parts constituting the district shall afterwards become or be entirely comprised within the limits of a corporate borough, the mayor, aldermen and burgesses of such borough shall, from and after such day as shall have been specified in the charter of incorporation in this behalf, be by the council of the borough the local board of health within and for such district; and in case any day shall have been so specified, but not otherwise, the powers, authorities, duties, property, and liabilities of any other persons, as such local board, shall from and after that day absolutely cease and determine, and be vested in such mayor, aldermen, and burgesses, as fully to all intents and pur-

as they may think necessary." The clause was framed as a declaratory clause, in order that it should not raise any doubt as to the extent of the very large powers intended to be given by s. 10. *See ante*, p. 26.

poses as if they had always been the local board of health from the time when the district was originally constituted (*s*). 11 & 12 Vict. c. 63.

Local Management.

XXXIV. And be it enacted, that the local board of health of every non-corporate district (*t*)—

Local board of non-corporate districts to hold annual and monthly meetings, &c.

Shall hold an annual meeting, and other meetings for the transaction of business under this Act, once at least in each month, and at such other times as may be necessary, for properly executing its powers and duties under this Act;

and to make bye-laws with respect to summoning them and the management of business.

And shall from time to time make bye-laws with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business by such board under this Act:

(*s*) Section 12 (pp. 33, 34) provides only for cases in which a corporation (whether created before or after the passing of the Act) is in existence at the time when a district is constituted. The present section (23) is framed with a view to the future creation of a corporate borough, either with boundaries identical with or including those of a district already constituted under the Act. The case of a district exclusively consisting at the time of its formation of non-corporate parts, and afterwards becoming *partly* included in a new corporate borough, is not likely to arise; but if it should, it would probably be desirable to alter or extend the boundaries of the district by a provisional order which would contain all the necessary provisions applicable to the altered circumstances. *See* s. 141, p. 193.

(*t*) In corporate districts the matters provided for by this section will be regulated by the laws for the time in force with respect to municipal corporations. *See* commencement of s. 12, p. 32.

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Provided always, that no business shall be transacted at any such meeting, unless at least one-third of the full number of members be present thereat;

Quorum in general;

In Oxford and Cambridge districts.

Except in either of the districts to be called the Oxford or Cambridge districts, in which cases business may be transacted if at least seven members be present (*u*);

Majority to decide.

And all questions shall be decided by a majority of votes;

And the names of the members present, as well as of those voting upon each question, shall be recorded:

Chairman to be appointed.

And the said local board shall at their first meeting under this Act, and afterwards from time to time at their annual meeting, appoint one of their number to be chairman for one year at all meetings at which he is present (*v*);

Provision in case chairman be absent.

And in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat;

In case of his death, &c.

And in case the chairman appointed as first aforesaid die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning,

(*u*) In these districts the Oxford and Cambridge improvement commissioners for the time being will be the local boards of health (s. 31). In either case the number of commissioners is very large, and seven is the quorum fixed by the present Improvement Acts.

(*v*) As to the chairman's duties with respect to conducting elections, *see* s. 21, pp. 51, 52.

or becoming incapable would have been entitled to continue in office, and no longer; 11 & 12 Vict. c. 63.

And the chairman at any meeting shall have a second or casting vote in case of an equality of votes; Casting vote.

But nothing herein contained with respect to the appointment of chairman shall apply to any district to be called the Oxford or Cambridge district (*x*), and in such districts the Oxford or Cambridge commissioners respectively shall appoint a chairman as heretofore. Chairman in Oxford and Cambridge districts.

XXXV. And be it enacted, that the local board of health shall from time to time provide and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act; Local boards to provide proper offices;

And (in the case of a non-corporate district) shall cause to be made a seal for the use of such board in the execution of this Act: In non-corporate districts a seal.

And documents or copies of documents purporting to proceed from the said local board, and to be signed by any five or more members thereof, and to be sealed or stamped with such seal, or (in the case of a corporate district) to be sealed with the common seal, shall be received as *primâ facie* evidence in all courts and places whatsoever. Evidence of documents.

XXXVI. And be it enacted, that the local board of health may from time to time appoint out of their Committees may be appointed.

(*x*) *See ante*, s. 31, pp. 60, 61.

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own number so many persons as they may think fit, for any purposes which in the opinion of the said local board would be better regulated and managed by means of a committee: provided always, that the acts of every such committee shall be submitted to the said local board for their approval (*y*).

Local Officers.

Local boards to appoint surveyor, inspector of nuisances, clerk, treasurer, &c.

XXXVII. And be it enacted, that the local board of health shall from time to time appoint fit and proper persons (*z*) to be surveyor, inspector of nuisances (*a*), clerk, and treasurer, for the purposes of this Act, and shall appoint or employ such collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act (*b*);

and to make bye-laws as to their duties.

And shall make bye-laws for regulating the duties and conduct of the several officers and servants so appointed or employed:

(*y*) *See* a similar provision in the Municipal Corporation Act (5 & 6 Will. 4, c. 76, s. 70), and in the Metropolitan Sewers' Act (11 & 12 Vict. c. 112, s. 21).

(*z*) If a district be formed only for the purposes in which the services of all these officers are not required, the appointments must be regulated accordingly.

(*a*) The City of London Sewers Act, 1848, (s. 88,) authorizes the appointment of an inspector of nuisances, and requires the person appointed to superintend and enforce the execution of the duties of scavengers; to point out nuisances; to enter in a book, and to inquire into and report upon, complaints with respect to any deficiency in the supply of water, or with respect to breaches in any provision, rule, or regulation for promoting cleanliness, or for the suppression of nuisances; and to take proceedings before magistrates for the punishment of offenders against the Act.

(*b*) As to the appointment of an officer of health. *See post*, s. 40, p. 72.

Salaries, &c.

And the said local board may pay, out of the general district rates (*c*) to be levied under this Act, to such officers and servants such reasonable salaries, wages, or allowances as the said local board may think proper;

Removal of officers, &c.

And every such officer and servant shall be removable by the said local board at their pleasure, subject, nevertheless, in the case of the removal of the surveyor, to the approval of the general board of health (*d*):

Same person may be surveyor and inspector of nuisances, but not clerk and treasurer.

Provided always, that the same person may be both surveyor and inspector of nuisances;

But neither the person holding the office of treasurer nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of treasurer; and whosoever offends in any of the cases enumerated in this proviso shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt (*e*).

(*c*) *See post*, s. 87, p. 136.

(*d*) The commissioners for inquiring into the state of large towns, &c., recommended that both the appointment and dismissal of the surveyor should be subject to approval (4th recommendation, Second Report, p. 20); and the bill as originally brought into parliament was framed in accordance with that recommendation.

(*e*) This prohibition is to be found in many local improve-

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Penalty upon officers, &c. interested in contracts or taking fees improperly.

XXXVIII. And be it enacted, that no officer or servant appointed or employed by or under the local board of health shall in anywise be concerned or interested in any bargain or contract made with such board for the purposes of this Act; and if any such officer or servant be so concerned or interested, or shall, under colour of his office or employment, exact, take, or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt (*f*).

Officers, &c. intrusted with money to give security.

XXXIX. And be it enacted, that before any such officer or servant enters upon any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local board of health by whom he is appointed shall require and take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all monies which may be intrusted to him by reason thereof;

Accounting

And every such officer or servant employed in the

ment Acts, and it is adopted in the terms of the text in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 28).

(*f*) From the Commissioners Clauses Act, 1847, s. 67. *See* a similar provision in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 29), and the City of London Sewers Act, 1848, s. 27.

collection of rates under the authority of this Act shall, within seven days after he shall have received any monies on account of such rates, pay over the same to the treasurer, and shall, as and when the said local board may direct, deliver a list signed by him, containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them; 11 & 12 Vict. c. 63. for monies received on account of rates;

And every officer and servant appointed or employed by or acting under the said local board shall respectively, when and in such manner as shall be required by such board, make out and deliver to them a true and perfect account in writing of all monies received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such monies have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all monies owing by him upon the balance of accounts: for monies in general.

And if any such officer or servant— Summary proceedings in case of failure to account, &c., or to deliver up papers, &c. relating to execution of the Act.

Fail to render such account,—

Or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power,—

Or to pay over any such monies as aforesaid;

Or, if for the space of five days after being thereunto required, he fail to deliver up to the said local board all papers and writings, property, effects, matters, and things, in his possession

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or power, relating to the execution of this Act, or belonging to such board,—

Then and in every such case a justice shall, on complaint (*g*) being made to him in that behalf, summon the party charged to appear and answer the complaint before two justices at a time and place to be specified in the summons; and upon the appearance of the party charged, or upon proof that the summons was personally served upon him, or left at his last known place of abode or business;

Punishment for failure to render accounts, or deliver up papers, &c.

And if it appear to the last mentioned justices that he has failed to render any such accounts, or to produce and deliver up any such vouchers or receipts, or any such papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, they may, by warrant under their hands and seals, commit the offender to gaol, there to remain, without bail, until he shall have rendered such accounts, and produced and delivered up all such vouchers, receipts, books, papers, writings,

(*g*) This complaint being in respect of an offence for which the offender is rendered liable to imprisonment, is an "information" within the meaning of the recent Act with respect to summary convictions and orders (11 & 12 Vict. c. 43, s. 6). (*See* Archbold's edition of Jervis's Acts, p. 90, note.) The course of proceeding prescribed by that Act must be construed as supplemental to the provisions of this Act with respect to summary proceedings before justices, except in so far as it may be inconsistent therewith. In case of inconsistency the statute in the text (being the more recent Act), will govern proceedings taken under its provisions.

property, effects, matters and things in respect of which the charge was made; 11 & 12 Vict. c. 63, s. 29.

And (*h*) if it appear that the party charged has failed to pay over any such monies as aforesaid, and that he still fails or refuses so to do, the last mentioned justices may, by a like warrant, cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress commit him to gaol, there to remain, without bail, for a period of three months, unless such monies be sooner paid: For failure to pay over rates or monies.

Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, such justice may without previous summons, by warrant under his hand and seal, cause him to be forthwith apprehended; and in such case the said party shall, within twenty-four hours after apprehension, be brought before the same or some other justice, who may order that he be discharged from custody, (if such justice think that there is no sufficient ground for detention), or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices: Offenders about to abscond may be apprehended.

(*h*) This paragraph would have been more properly commenced with the words, "*or*, if it appear;" and it will be construed as if it had been so worded.

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Proceedings not to relieve sureties.

Provided also, that no such proceeding shall be construed to relieve or discharge any surety of the offender from any liability whatsoever (*i*).

A medical officer may be appointed;

XL. And be it enacted, that the local board of health may from time to time, if they shall think fit, appoint a fit and proper person, being a legally qualified medical practitioner or a member of the medical profession, (*k*) to be and be called the officer of health, who shall be removable by the said local board, and shall perform such duties as the said general board shall direct; (*l*)

(*i*) This section embodies ss. 68-74 of the Commissioners Clauses Act, 1847 (10 Vict. c. 15). Similar provisions will be found in the Metropolitan Sewers Act (11 & 12 Vict. c. 112), s. 30; and in the City of London Sewers Act, 1848, ss. 28–32, and s. 201.

(*k*) In the copies printed by the Queen's printer the clause reads thus—"being a legally qualified medical practitioner, or member of the medical profession;" but the text of the present edition is according to the ingrossment, which stands thus—"being a legally qualified medical practitioner, or *a* member of the medical profession." The clause authorizing the appointment of an officer of health was first inserted in the copy of the bill ordered by the House of Commons to be printed on the 13th March, 1848, and the qualification then fixed was that of being "a member of the medical profession." The copies ordered to be printed on 15th and 25th May 1848, contained the same qualification; but upon bringing up the report, the qualification was amended advisedly according to the present text. All the copies printed for the House of Lords are correct; the error first appears in the copies printed for the Commons when the bill was returned from the Lords, and exhibiting the amendments made by the Lords. Since this note was printed the Queen's printer's copies have been amended, and the copies issued by him since the 9th of November are correct in this particular.

(*l*) The appointment of a medical officer was recommended

11 & 12 Vict. c. 63.

he may act for more than one district.

Remuneration.

And the same person may be officer of health for two or more districts;

And the local board or boards of health of the district or districts respectively for which any such officer is appointed may pay to him, out of the general district rates (*m*) to be levied under this Act, such remuneration by way of annual salary or otherwise as the said local board or boards may by order in writing determine and appoint, and (in case of a joint appointment for two or more districts) in such proportions as the said general board may by order in writing determine and appoint:

Appointment, &c. subject to approval.

Provided always, that the appointment and removal of the officer of health shall be subject to the approval of the said general board.

Local Maps, &c.

Map exhibiting system

XLI. And be it enacted, that the said local board of health may, if they shall think fit, cause

by the commissioners for inquiring into the state of large towns, &c. (29th recommendation, 2nd Report). The city of London Sewers Act, 1848, s. 80, authorizes the appointment of "one or more medical officers of health;" and the officers appointed are required to report periodically upon the sanitory condition of the city; to ascertain the existence of contagious, epidemic, and other diseases which increase the rates of mortality; to point out nuisances likely to be injurious to health, and the most efficacious means for preventing the spread of disease; to suggest the most efficient means for the ventilation of churches, chapels, schools, lodging-houses, and other public edifices; and to perform any duties of a like nature. Similar duties are prescribed by the Liverpool Sanitary Act, 1845, s. 122, and by s. 12 of the Towns Improvement Clauses Act, 1848 (10 & 11 Vict. c. 34).

(*m*) See *post*, s. 87, p. 136.

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of sewerage may be procured.

to be prepared, or to (*n*) procure, a map exhibiting a system of sewerage for effectually draining their district for the purposes of this Act, upon a scale to be prescribed by the general board of health; and every such map shall be kept at the office of the said local board, and shall at all reasonable times be open to the inspection of the rate-payers of the district to which it applies (*o*).

Expense of surveys, maps, &c.

XLII. And be it enacted, that the expense of surveys, maps, or plans made, prepared, or procured by the local board of health for the purposes of this Act shall be defrayed out of the general district rates to be levied under this Act (*p*).

Sewers.

All sewers,

XLIII. And be it enacted, that all sewers (*q*), whether existing at the time when this Act is applied, or made at any time thereafter, except—

(*n*) The word "to" ought to have been struck out. The clause as originally framed, and as it left the House of Commons, ran thus: "That *it shall be lawful for* the local board of health *to* cause to be prepared, or *to* procure a map, &c. The Lords amended this and other clauses by expressing permissive powers by the word "may" instead of by the words "it shall be lawful," and the imperative duties by the word "shall" instead of by the words "it shall be the duty." This explanation will at once account for the error in the text, and for another of a similar kind in s. 46, p. 78.

(*o*) As to the mode of defraying the expense of maps, see the next section.

(*p*) See *post*, s. 87, p. 136.

(*q*) This word includes sewers and drains of every description, except mere house drains, s. 2, *ante*, p. 10.

Sewers made by any person or persons for his or their own profit, or for the profit of proprietors or shareholders; and except— 11 & 12 Vict. c. 63. with certain exceptions,

Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (*r*);

And sewers under the authority of any commissioners of sewers appointed by the Crown (*s*);

Together with all buildings, works, materials, and things belonging or appertaining thereto, shall vest in, belong to, and be entirely under the management and control of the local board of health. vested in the local board.

XLIV. And be it enacted, that the local board of health may, if they shall think fit, purchase the rights, privileges, powers, and authorities vested in any person for making sewers, or contract for the use of any sewers within their district, or purchase any such sewers, with or without the buildings, works, materials, and things belonging or appertaining thereto; and any person to whom any such rights, privileges, powers, authorities, sewers, buildings, works, materials, or things belong may sell and dispose of the same to, or otherwise contract with, the said local board (*t*); Local board may purchase or contract for the use of sewers.

(*r*) See also the declaratory provisions in s. 145, p. 197.

(*s*) See s. 145, p. 197.

(*t*) At Cheltenham a company is constituted by Act of Parliament (3 Will. 4, c. 90), under the name of the Chelten-

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Application of purchase money.

And in case of any such sale, the purchase money shall be settled and applied to the same uses and trusts to which the property purchased may have been subject at the time of such sale, and the property purchased shall vest in and belong to the local board of health purchasing the same, any thing to the contrary notwithstanding (*u*):

Purchase not to affect private rights.

Provided always, that, notwithstanding any such purchase, any person who previously thereto may have acquired perpetual right to use any sewer so purchased shall be entitled to use the same, or any other sewer substituted in lieu thereof, in as full and ample a manner as he would or might have done if such purchase had not been made.

Repairing,

XLV. And be it enacted (*v*), that the local board of health shall from time to time repair the sewers vested in them by this Act;

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ham Sewers' Company, with powers to construct sewers and house drains for their own profit, and this section was framed with a view to that Act.

(*u*) The Cheltenham Sewers' Company (see the last note) are prohibited by their local Act, from disposing of their sewers, and the Act provides that in case the company cease to exist, their sewers shall vest in the churchwardens and overseers of the poor for the time being.

(*v*) Expenses incurred in respect of the works which are the subject of this section will be defrayed by rates (called special district rates) levied upon the district or part of a district benefited by the works, in such manner that the principal and interest may be paid off within 30 years. See s. 86, pp. 134, 135.

making,—

And (*w*) shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act:

laying down,—

And the said local board may carry any such sewers through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriage-way of any street, and, after reasonable notice in writing in that behalf, (if upon the report of the surveyor it should appear to be necessary,) into, through, or under any lands whatsoever:

altering and closing up Sewers.

And the said local board may from time to time enlarge, lessen, alter, arch over, or otherwise improve all or any of the sewers vested in them by this Act, and discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance; and if by reason thereof any person is deprived of the lawful use of any sewer the said local board shall provide some other sewer as

(*w*) This clause is framed upon ss. 24, 25, 26, of the Towns Improvement Clauses Act 1847. The enactment will render it imperative upon the local board to make all necessary sewers; the power usually contained in local Acts is merely permissive, and such is the case in the City of London Sewers Act 1848 (s. 53). A clause similar to that in the text is adopted in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 38).

By s. 69, *post*, p. 112, 113, the local board is empowered to require the owners or occupiers of property in streets which have not become highways to construct proper sewers.

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effectual for his use as the one of which he is so deprived.

Sewers to be kept so as not to be injurious to health, &c.

XLVI. And be it enacted, that the local board of health shall cause the sewers vested in them by this Act to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied (*w*);

Works for cleansing sewers.

And for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause all or any of such sewers to communicate with and be emptied into such places as may be fit and necessary, or to (*x*) cause the sewage and refuse therefrom to be collected for sale for any purpose whatsoever, but so as not to create a nuisance (*y*).

(*w*) This provision is adopted in the same terms in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 45), and a provision to the same effect is contained in the City of London Sewers Act 1848, s. 68.

All works of a permanent nature which may be executed under this section will be defrayed out of the special district rates (s. 86, pp. 134, 135), and works of a temporary nature out of the district fund or general district rates (s. 87), p. 136.

(*x*) See note (*n*) *ante*, p. 74.

(*y*) This provision is also adopted in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 45). The corresponding provision in the City of London Sewers Act is s. 53, but by that enactment sewers are expressly allowed to communicate with and to be emptied "into the river Thames, or into any public stream or watercourse." The 24th section of the Towns Improvement Clauses Act, 1847 (upon which the section in the text is framed), also gives an express licence to drain into public rivers, but in the present Act any apparent sanction of the practice of pollut-

XLVII. And be it enacted, that it shall not be lawful— 11 & 12 Vict. c. 63.

No opening to be made into, or building built over sewers, or vault to be made under streets, without consent.

To cause any sewer or drain to communicate with or to be emptied into any sewer of the local board of health,—

Nor to cause any building to be newly erected over any such last-mentioned sewer,—

Nor to cause any vault, arch, or cellar to be newly built or constructed under the carriage-way of any street,—

Without the written consent of the said local board first had and obtained (*z*):

Pecuniary penalty;

And whosoever offends against this enactment shall forfeit to the said local board the sum of five pounds, and a further penalty of forty shillings for every day during which the offence is continued after notice in writing from them in this behalf (*a*);

and openings, &c. contrary to the enactment may be altered, &c.

And if any sewer, drain, building, vault, arch, or cellar be made, erected, or constructed contrary to this enactment the said local board may cause the same to be altered, pulled down, or otherwise dealt with as they may think fit, and the expenses incurred by

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ing rivers, &c. has been studiously avoided. By s. 56, p. 95, all sewage collected by the local board may be disposed of by them, and the proceeds are directed to be applied for the benefit of the district.

(*z*) The section embodies ss. 30, 31 of the Towns Improvement Clauses Act, 1848. Somewhat similar provisions are contained in the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, ss. 54, 55; and in the City of London Sewers Act, 1848, s. 125.

(*a*) As to the recovery and application of penalties, see s. 129, *post*, p. 180—182; and s. 133, p. 185.

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them in so doing shall be repaid to them by the offender, and be recoverable from him in the summary manner hereinafter provided (*b*).

Sewers may be used by owners, &c. beyond district by leave of local board.

XLVIII. And be it enacted (*c*), that any owner or occupier of premises adjoining or near to, but beyond the limits of, any district may cause any sewer or drain of or from such premises to communicate with any sewer of the local board of health upon such terms and conditions as shall be agreed upon between such owner and occupier and such local board, or, in case of dispute, as shall be settled by arbitration in the manner provided by this Act (*d*).

House Drains, &c.

No new house to be built without covered drains, &c.

XLIX. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any house which may have been pulled down to or below the floor commonly called the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as upon the report of the surveyor shall appear to be necessary and sufficient for the proper and effectual drainage of the same and its appurtenances;

(*b*) See *post*, s. 129, p. 180.

(*c*) A similar provision is contained in the City of London Sewers Act, 1848, s. 60; and in the Towns Improvement Clauses Act, 1848, s. 34.

(*d*) See *post*, ss. 123—128, pp. 175—179.

11 & 12 Vict. c. 63.

and such drains shall communicate with the sea or a sewer, if either be within a certain distance, or, if not, with a covered cesspool.

And if the sea, or a sewer of the local board of health, or a sewer which they are entitled to use, be within one hundred feet of any part of the site of the house to be built or rebuilt, the drain or drains so to be constructed shall lead from and communicate with such one of those means of drainage as the said local board shall direct, or if no such means of drainage be within that distance, then the last-mentioned drain or drains shall communicate with and be emptied into such covered cesspool or other place, not being under any house, and not being within such distance from any house as the said local board shall direct:

Penalty.

And whosoever erects or rebuilds any house or constructs any drain contrary to this enactment shall be liable for every such offence to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt:

Local board, upon report of surveyor that any house is without a drain, and if the sea or a sewer be within a certain distance, shall require one to be constructed;

And if at any time, upon the report of the surveyor, it appear to the said local board that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without any drain, or without such a drain or drains communicating with the sea or a sewer as is or are sufficient for the proper and effectual drainage of the same and its appurtenances, and if the sea, or a sewer of the said local board, or a sewer which they are entitled to use, be within one hundred feet of any part of such house, they shall cause notice in writing to be given to the owner or occupier of such house,

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requiring him forthwith, or within such reasonable time as shall be specified therein, to construct and lay down, in connexion with such house and one of those means of drainage, one or more covered drain or drains, of such materials and size, at such level, and with such fall as upon the last-mentioned report shall appear to be necessary;

and in case of default they may execute the works at the expense of owner or occupier.

And if such notice be not complied with (*e*) the said local board may, if they shall think fit, do the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or, by order of the said local board, shall be declared to be private improvement expenses, and be recoverable as such in manner hereinafter provided (*f*).

(*e*) In accordance with the recommendation of the commissioners for inquiring into the state of large towns, &c. the construction of proper house drains is by this section rendered compulsory. (*See* 8th recommendation and observations thereon, 2nd Report, p. 28). The commissioners also recommended that the duty of constructing house drains as well as public sewers be cast upon the local boards in the first instance, and the model clauses in the Towns Improvement Clauses Act, 1847 (ss. 35, 36), are framed upon that principle. The present Act is founded upon the principle of requiring the owners or occupiers to execute the works in the first instance, and of calling upon the public authority to do so only in case of their default.

(*f*) If the local board elect to charge the owner, the expenses may be recovered before two justices (s. 129, p. 180), and the whole may be demanded at once, or time may be given and the amount received by annual instalments of not less than one-thirtieth part of the entire sum with interest at the rate of 5*l.* per cent. per annum; (s. 146, pp. 197-8). If the expenses be declared to be private improvement expenses the amount,

11 & 12 VICT. c. 63.

In parishes, &c. of less than 2,000 inhabitants, and in which the Act has not been applied by order in council or provisional order,—

L. And be it enacted (*g*), That if it shall appear to a majority of not less than three-fifths of the rated inhabitants of any parish or place containing less than two thousand inhabitants on the then last census, in which this Act shall not have been

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together with interest at the rate of 5*l.* per cent. per annum, will be levied upon the occupier (except in the cases to be presently noticed), by means of a rate called the private improvement rate, which may be spread over any period not exceeding thirty years. But in the latter case the principal part of the burden will still fall upon the owner, for if the rent be a rack-rent the occupier will be entitled to deduct three-fourths of the sum paid by him, or if the rent be less than a rack-rent, then he may deduct "such proportion of three-fourths of the sum paid as the rent bears to the rack-rent" (s. 91, p. 143); and if the annual value of the premises in respect of which the rate is made do not exceed ten pounds, or if the premises be let to weekly or monthly tenants, or in separate apartments, and the rents are payable oftener than quarterly, the owner may be called upon to compound or pay the rate in full (s. 95, p. 146). Owners or occupiers may at any time redeem private improvement rates (s. 92, p. 144); and by s. 120, in all cases in which the local board are empowered to recover expenses in a summary manner, or by means of a private improvement rate (as prescribed by the section under consideration), the general board of health may, upon application, regulate the manner in which the discretion shall be exercised (p. 168).

Provision for compelling proper house drainage will also be found in the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, s. 46, and in the City of London Sewers Act, s. 61.

(*g*) This section is an exception to the ordinary machinery of the Act, inasmuch as the powers contained in it may be put in force by vote of the inhabitants alone, without an order in council or provisional order, and without any preliminary inquiry by the general board of health, (see *ante*, pp. 2, 3, note) (*b*). The inhabitants referred to throughout the section mean resident inhabitants (see *ante*, p. 17, note) (*w*).

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applied by order in council or provisional order as

It will be observed that the clause is misplaced. It was added on the third reading in the House of Commons, and its present position in the Act serves to illustrate an observation made by Mr. Ley, (the chief clerk of the House of Commons) before the select committee on printing, that "when amendments are made on the third reading great inconvenience sometimes arises in conseqence of the difficulty of finding the [proper] place in the parchment roll" if correct instructions are not furnished by the member proposing them (1st Report of the Select Committee on Printing, p. 12). The following observations, collected from the same report, will show how easily such a misplacement may occur, and will also give some idea of the state of the parchment roll where amendments are made after the ingrossment thereon has been first drawn up.—The "parchment roll" is the record commonly called the "ingrossment;" it is made in the house in which the bill is originated, between the stages of report and third reading, and is a fair copy of the bill as amended in committee and on the report. All amendments on the third reading (except new clauses) are inserted in the margin of the ingrossment; if new clauses ("or ryders" as they are called) are added, they are stitched upon the face of the ingrossment by the ingrossing clerks. In this state the bill is sent to the other house, and in case amendments or new clauses are made there, then, if they be agreed to by the house from which the bill was sent, the ingrossing clerk of the *Lords* alters the ingrossment accordingly by erasing with a scraper the top and bottom of all words struck out, and by entering in the margin matter which has been added, with the exception of new clauses, which are written on separate pieces of parchment and tacked on in the places in which they ought to occur. The ingrossment so amended is the document which receives the royal assent. It may easily be supposed, that, "if any of these amendments or clauses are disagreed to or amended two or three times over by each house, the clerk of the Parliaments is required to exercise a very delicate and important duty in arranging the amendments which ought to be entered on the roll." (Mr. Dorington's evidence, same report, p. 17.)

The House of Lords amended the clause now under consideration,—(1) by making the majority required to originate pro-

aforesaid (*h*), assembled at a public meeting to be called as is hereinafter provided, that it would con- 11 & 12 Vict. c. 63.

ceedings a simple majority, instead of a majority of not less than three-fifths; (2) by extending the operation of the clause to parishes having a population not exceeding *five* thousand inhabitants; (3) by enabling the churchwardens and overseers to provide water in any manner whatever. To all these amendments the Commons disagreed, as being an interference with their privileges, contending that the Lords can neither originate any proposal for casting a fresh burthen upon the subject, nor interfere with the machinery by which the charge is to be created, nor alter the funds by which the charge is to be borne. Amendments made by the Lords in other parts of the Act were also resisted upon the same ground; thus, an amendment in s. 58, making the expense of filling up open ditches, &c. a charge upon the public rates in all cases; another in s. 78 enabling the churchwardens and overseers to maintain all existing public cisterns, &c.; another in s. 82, enabling the local boards to form new burial grounds; another in s. 75, converting the *power* to supply water into an imperative duty; and lastly an amendment proposing that s. 96 (which gives power to reduce or remit rates on account of poverty) should be struck out. The Lords did not insist upon any of these amendments; but the concession can only be considered as made for the purpose of avoiding a discussion which would have risked the passing of the measure, for during the short but interesting debate upon the consideration of the Commons' reasons for disagreement (Aug. 15, 1848), there was a strong expression of opinion on both sides of the house (Lords Lansdowne, Ellenborough, Redesdale, and Campbell taking part in the debate), that the pretensions of the Commons could not be maintained. The right of the Commons to originate all proposals for the *direct imposition* of burthens was freely conceded; but it was strongly contended that the privilege did not extend to proposals by which a power to tax was *delegated* to an intermediate authority. It is to be regretted that no report of this debate, or even the purport of it, appeared in the public prints. See *Hallam's Constitutional History*, vol. 2, pp. 189, 193, (*4th Edition*).

(*h*) See *ante*, s. 10, pp. 24-26.

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tribute to the health and convenience of the inhabitants—

sewers, wells, pumps, &c. may be provided and open ditches, covered, &c. by churchwardens and overseers, upon vote of the inhabitants alone at two public meetings:

That any pond, pool, open ditch, sewer, drain, or place containing or used for the collection of any drainage, filth, water, matter or thing of an offensive nature, or likely to be prejudicial to health, should be drained, cleansed, covered, or filled up,—

Or that a sewer should be made or improved, a well dug, or a pump provided (*h*), for the public use of the inhabitants,—

Plan and estimate to be procured:

The churchwardens and overseers of such parish or place shall procure a plan and an estimate of the cost of executing such works, or any of them, and shall lay the same before another public meeting of such rated inhabitants, to be called as is hereinafter provided;

Approval at second meeting:

And if the same shall be approved and sanctioned by a majority (*i*) of the rated inhabitants assembled

(*h*) Penalties for injuring or polluting any well or pump provided under this clause are imposed by ss. 79, 80.

(*i*) As the bill left the Commons, the majority at the second meeting was also a majority consisting of not less than three-fifths. The naked majority, as the Act now stands, is according to an amendment of the Lords; but in this case also the Commons intended to disagree upon the ground of privilege; but by some accident the line in which the amendment occurred was not referred to in the Commons' reasons for disagreement. See the copy of the bill printed for the House of Lords, exhibiting the amendments made by the Lords, and also the amendments made (or rather intended to be made) by the Commons to the amendments of the Lords. Considering the mode in which amendments and counter-amendments are communicated from one house to the other, it is remarkable that similar mistakes do not more frequently occur.

at such last-mentioned meeting, such churchwardens and overseers shall cause the works in respect of which such estimate shall have been made and sanctioned as aforesaid to be executed, and shall pay the cost thereof out of the poor rates of such parish or place:

11 & 12 Vict. c. 63.

Expenses charged upon poor-rates.

Provided always, that notice of every such meeting shall be given by such churchwardens and overseers as is by this Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of this Act (*k*), and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.

Notice previously to the public meetings.

LI. And be it enacted, That it shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the floor commonly called the ground floor, without a sufficient watercloset or privy and an ashpit, furnished with proper doors and coverings; and whosoever offends against this enactment shall be liable to a penalty not exceeding twenty pounds (*l*):

No new house to be built without proper water-closet, &c.

Penalty.

And if at any time, upon the report of the surveyor,

And if upon surveyor's report any

(*k*) That is to say, fourteen days' notice of the time and place at which the meeting will be held, by advertisement in one or more newspapers usually circulated in the parish or place in which the meeting is called, and by fixing notice upon the principal churches, chapels, public buildings, and places where public notices are usually affixed. See *ante*, s. 9, p. 20.

(*l*) Adopted in the Metropolitan Sewers Act, s. 48, and a provision to the same effect, but without any pecuniary penalty, is contained in s. 100 of the City of London Sewers Act, 1848.

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house whatever appear to be without a proper watercloset; Local board to require that the same be furnished;

it appear to the local board of health that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without a sufficient watercloset or privy and an ashpit, furnished with proper doors and coverings, the said local board shall give notice in writing to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to provide a sufficient watercloset or privy and an ashpit so furnished as aforesaid, or either of them, as the case may require;

and in case of default they may do the works and charge owner or occupier with the expense.

And if such notice be not complied with, the said local board may, if they shall think fit, cause to be constructed a sufficient watercloset or privy and an ashpit, or either of them, or do such other works as the case may require; and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or, by order of the said local board, shall be declared to be private improvement expenses, and be recoverable as such in manner hereinafter provided (*m*):

User of watercloseta by inmates of two or more houses.

Provided always, that where a watercloset or privy has been and is used in common by the inmates of two or more houses, or if, in the opinion of the said local board, a watercloset or privy may be so used, they need not require the same to be provided for each house.

So much of the clause as relates to privies is founded upon the 23rd recommendation of the commissioners for inquiring into the state of large towns (Second Report, p. 60).

(*m*) The mode in which these expenses may be recovered is the same as that prescribed in s. 49, with respect to the con-

11 & 12 Vict. c. 63.

Waterclosets to be provided in factories for the separate use of each sex, upon notice from local board.

LII. And be it enacted, That if at any time it appear to the local board of health, upon the report of the surveyor, that any house is used or intended to be used as a factory or building in which persons of both sexes, and above twenty in number, are employed or intended to be employed at one time in any manufacture, trade, or business, the said local board may, if they shall think fit, by notice in writing to the owner or occupier of such house, require them or either of them, within a time to be specified in such notice, to construct a sufficient number of waterclosets or privies for the separate use of each sex;

Penalty.

And whosoever neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and a further penalty not exceeding forty shillings for every day during which the default is continued (*n*).

Notice of building and rebuilding, with respect to levels of houses, situation of privies, &c.

LIII. And be it enacted, That, fourteen days at the least before beginning to dig or lay out the foundations of or for any new house, or to rebuild any house pulled down to the extent aforesaid (*o*)

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struction of house drains. *See* the note to that section, *ante*, p. 82, note (*f*).

The second branch of this section, and the proviso were framed upon ss. 42, 43 of the Towns Improvement Clauses Act, 1847, and they are adopted in the terms of the text in the Metropolitan Sewers Act, (11 & 12 Vict. c. 112, s. 48). Power to require owners to provide proper privies and ashpits is given by the City of London Sewers Act, 1848, s. 99.

(*n*) Adopted in the City of London Sewers Act, 1848, s. 101. The provision is entirely new.

(*o*) That is to say, "to or below the floor commonly called

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the person intending so to build or rebuild shall give to the local board of health written notice thereof, together with the level or intended level of the cellars or lowest floor, and the situation and construction of the privies and cesspools to be built, constructed, or used in connexion with such house;

Building until particulars have been approved prohibited.

And it shall not be lawful to begin to build or rebuild any such house, or to build or construct any such privy or cesspool, until the particulars so required to be stated have been approved by the said local board:

Pecuniary penalties for building without notice or approval:

And in default of such notice, or if any such house, privy, or cesspool be built, rebuilt, or constructed as aforesaid without such approval, or in any respect contrary to the provisions of this Act (*p*), the offender shall be liable to a penalty not exceeding fifty pounds; and the said local board may, if they shall think fit, cause such house, privy, or cesspool to be altered, pulled down, or otherwise dealt with as the case may require, and the expenses incurred by them in so doing shall be repaid by the offender, and be recoverable from him in the summary manner herein-after provided:

Building may be pulled down, &c.

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the ground floor; see ss. 49, 51, at the commencement; pp. 80, 87. It was originally proposed that the notice required by this clause should apply to house drains and waterclosets, but the words to that effect were struck out by the House of Commons. The construction of house drains in connexion with newly built houses is regulated by s. 49, pp. 80, 81.

(*p*) See the provisions with respect to street levels, s. 72, post, pp. 115, 116.

11 & 12 Vict. c. 63.

Approval or disapproval to be specified within 14 days.

Provided always, that if the said local board fail to signify their approval or disapproval of the said particulars for the space of fourteen days after receiving such notice it shall be lawful to proceed according to such notice if the same be otherwise in accordance with the provisions of this Act (*q*).

Local board to provide that drains, &c. do not become a nuisance.

LIV. And be it enacted, that the local board of health shall see and provide that all drains whatsoever, and the waterclosets, privies, cesspools, and ashpits within their district, are constructed and kept so as not to be a nuisance or injurious to health;

And the surveyor may—

Surveyor may be authorized to enter premises in order to inspect and lay open drains, &c.

By written authority of the said local board (who are hereby empowered to grant such authority, upon the written application of any person showing that the drain, watercloset, privy, cesspool, or ashpit, in respect of which application is made is a nuisance or injurious to health, but not otherwise),—

And after twenty-four hours' notice in writing (or in case of emergency without notice), to the

(*q*) The City of London Sewers Act, 1848 (ss. 63, 64), requires certain notices and approval previously to building or re-building, and by the Metropolitan Sewers Act (11 & 12 Vict. c. 112. s. 47) the district surveyors under the building Act (7 & 8 Vict. c. 84), are required to make returns to the Metropolitan Commissioners of Sewers of all notices of building or re-building given under the last mentioned Act. The provisions of the section in the text were framed upon ss. 38—41 of the Towns Improvement Clauses Act, 1847.

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occupier of the premises to which such drain, watercloset, privy, cesspool, or ashpit is attached or belongs,—

Enter such premises, with or without assistants, and cause the ground to be opened, and examine and lay open such drain, water-closet, privy, cesspool, or ashpit;

If drains, &c. be found in proper order, damage to be made good;

And if the drain, watercloset, privy, cesspool, or ashpit, in respect of which such examination is made, be found to be in proper order and condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the said local board (*r*);

If not, local board to require the execution of the necessary works, &c.;

But if upon such examination such drain, watercloset, privy, cesspool, or ashpit appear to be in bad order and condition, or to require alteration or amendment, he shall cause the ground to be closed (*s*), and the said local board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the

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(*r*) See *post*, s. 144, p. 196. This branch of the section was framed upon s. 45 of the Towns Improvement Clauses Act, 1847.

(*s*) The words "he shall cause the ground to be closed" originally crept into a copy of the bill printed for the House of Commons by mistake; but upon its being proposed in the House to strike them out, they were insisted upon by an honorable member by whom the bill had been very closely watched, and they were retained accordingly. The words certainly appear to be altogether out of place in this paragraph. In the corresponding clauses of the Metropolitan Sewers Act, (s. 49,) the words are omitted.

examination was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works (*t*); 11 & 12 Vict. c. 63.

And if such notice be not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the said local board may, if they shall think fit, execute such works, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or, by order of the said local board, shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided (*u*). And in case of default owner or occupier liable to penalty, and local board may execute the works at the expense of either of them.

LV. And be it enacted, that the local board of health shall from time to time and at all convenient times provide that all streets within their district, including the foot pavements thereof, are properly swept, cleansed, and watered, and that all dust, ashes, rubbish, filth, dung, and soil thereon are collected and removed (*v*): *Surface Cleansing, &c.* Streets to be cleansed, &c. by local board.

(*t*) These provisions are adopted in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 49,) and by s. 146 of the same Act, they may be put in force within the city of London by the city commissioners of sewers. Provisions for similar purposes are to be found in the City of London Sewers Act 1848, ss. 58, 70, 71, 72, 73. See also the Nuisances Removal and Diseases Prevention Act, 1848, ss. 1, 5, *post*, p. 209-213, 222.

(*u*) See s. 49, note (*f*), *ante*, p. 82.

(*v*) See provisions to the same effect in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 51), and in the City of London Sewers Act, 1848, ss. 82, 85, 147, 149, 150.

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Bye-laws as to removal of filth, manure, &c.;

and as to cleansing privies, &c.

And they may make bye-laws (*w*)—

With respect to the removal by the occupier, or (in case of his default) by the said local board, of dust, ashes, rubbish, filth, manure, dung, and soil collected, placed, or found in or about any house, stable, cowhouse, street, or place whatsoever, and for preventing the deposit thereof in or by the side of any street, or so as to be a nuisance to any person;—

And with respect to the times and manner of cleansing and emptying waterclosets, privies, and cesspools (*x*).

Local board may provide receptacles for dust, and places for sewage, &c.

LVI. And be it enacted (*y*), that the local board of health may, in their discretion, provide, in proper and convenient situations, boxes or other conveniences for the temporary deposit and collection of dust, ashes, and rubbish (*z*), and also fit buildings and places for the deposit of the sewage, soil, dung, filth, ashes, dust, and rubbish collected by such board;

(*w*) As to the making of bye-laws in general, see s. 115, *post*, pp. 163—165.

(*x*) These powers are in accordance with the thirteenth recommendation of the commissioners for inquiring into the state of large towns, &c. (Second Report, p. 50). See also City of London Sewers Act, ss. 103, 114. The section in the text is framed upon ss. 87, 94, 97, 98 of the Towns Improvement Clauses Act, 1847.

(*y*) This section is framed upon ss. 90-92 of the Towns Improvement Clauses Act, 1847.

(*z*) A similar clause will be found in the City of London Sewers Act, 1848, s. 148.

11 & 12 Vict. c. 63.

Sewage, &c. collected by the board to be sold by them for the benefit of the district.

And all sewage, soil, dung, filth, ashes, dust, and rubbish so collected by the said local board, or in any convenience provided as aforesaid, shall be vested in and be sold and disposed of by such board, and the proceeds thereof shall be carried to the district fund account herein-after mentioned (*a*);

Penalty for removing their sewage, &c. without consent.

And whosoever, without the consent (*b*) of the said local board, collects or removes any sewage, soil, dung, filth, ashes, dust, or rubbish belonging to them, shall for every such offence be liable to a penalty not exceeding forty shillings (*c*).

Local board may provide public necessaries.

LVII. And be it enacted (*d*) that the local board of health may, if they think fit, provide and maintain, in proper and convenient situations, water-closets, privies, and other similar conveniences for public accommodation, and defray the necessary expenses out of the district rates (*e*) to be levied under this Act.

(*a*) Sect. 87, *post*, p. 136. This is in conformity with the thirteenth recommendation of the commissioners for inquiring into the state of large towns. See similar provisions in the Metropolitan Sewers Act, s. 58; and in the city of London Sewers Act, s. 83.

(*b*) All consents must be in writing, s. 149, *post*, p. 200.

(*c*) As to the recovery and application of penalties, see ss. 129, 133, pp. 181, 185.

(*d*) See also the Metropolitan Sewers Act, s. 53; the city of London Sewers Act, 1848, s. 104; and the Towns Improvement Clauses Act, 1847, s. 93.

(*e*) There are two district rates, the special district rate and the general district rate; the expenses of permanent works are to be charged upon the former, those of temporary works upon the latter. See ss. 86, 87, pp. 134, 136.

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Local board to see that offensive ditches, &c. are cleansed or covered.

LVIII. And be it enacted (*f*), that the local board of health shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health;

And to require persons causing the nuisance, or the owner or occupier, to cleanse, &c.

And they shall cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require;

And in case of default to execute the necessary works at his expense.

And if the person to whom such notice is given fail to comply therewith, the said local board shall execute the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from him in a summary manner, or by order of the said local board shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided (*g*):

Provided always, that the said local board may

(*f*) Framed upon the Sewers Act (10 & 11 Vict. c. 70 (Local), ss. 25, and s. 99 of the Towns Improvement Clauses Act, 1847.

(*g*) As to expenses directed to be recovered in a summary manner, see 129, p. 180; and as to private improvement expenses, s. 90, p. 141. See also *ante*, p. 82, note (*f*).

order that the whole or a portion of the expenses incurred in respect of any such last-mentioned works be defrayed out of the special or general district rates to be levied under this Act; and in case of any such order the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly (*h*).

11 & 12 Vict. c. 63.

Expenses may at board's discretion be charged upon district, &c.

LIX. And be it enacted, that whosoever—

Keeps any swine or pig-stye in any dwelling-house, or so as to be a nuisance to any person (*i*),—

Or suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house

Penalties for keeping swine, &c. in improper situations, allowing waste water to remain in cellars, or privies, &c. to overflow.

(*h*) By this proviso it will be in the power of the local board to charge the expense of any works executed under the section upon the whole or part of a district. It is easy to conceive many cases in which it would be unjust and impracticable to charge the expenses in the manner prescribed by the enacting part of the clause. Whenever the board avail themselves of the discretion given by the proviso, permanent works, such as covering or filling up, must be charged upon the special district rate (86), and works of a casual or temporary character, such as cleansing, &c., upon the general district rates (ss. 87, 89). A similar discretion is given to the metropolitan commissioners of sewers by the recent Act (11 & 12 Vict. c. 112, s. 50).

By s. 7 of the Nuisances Removal and Diseases Prevention Act, 1848, *post*, p. 224, whosoever suffers filth, &c. to flow into any open ditch, so as to be a nuisance or injurious to health, from houses not occupied before September 4, 1848, or from any privy or watercloset constructed after that day, may be indicted for a misdemeanor, and is rendered liable to a penalty of five pounds per day during the continuance of the offence.

(*i*) It is stated, that during the prevalence of cholera in Sunderland in 1834, confined places in which pigs were kept

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for twenty-four hours after written notice to him from the local board of health to remove the same (*k*),—

And whosoever allows the contents of any water-closet, privy, or cesspool to overflow or soak therefrom (*k*),—

Shall, for every such offence, be liable to a penalty not exceeding forty shillings, and to a further penalty of five shillings for every day during which the offence is continued:

Such nuisances to be abated by local board.

And the said local board shall abate or cause to be abated every such nuisance, and the expenses incurred by them in so doing shall be repaid to them by the occupier of the premises upon which the same exists, and be recoverable from him in the summary manner hereinafter provided (*l*):

Removal of offensive accumulations, &c. upon notice from inspector of nuisances.

And if at any time it appear to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter whatsoever, ought to be removed, he shall give notice

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were the spots most visited by the epidemic. (2nd Report of the commissioners for inquiring into the state of large towns, p. 41.) The several provisions in this section (59), with the exception of those relating to swine, were framed upon the Towns Improvement Clauses Act, 1847, ss. 99, 101.

(*k*) See City of London Sewers Act, 1848, ss. 85, 87.

(*l*) The provision for summary abatement contained in this section is founded upon the 14th recommendation of the commissioners for inquiring into the state of large towns. (2nd Report, p. 44.)

See also the Nuisances Removal and Diseases Prevention Act, 1848 (ss. 1, 5, pp. 209, 222); but under that Act an order of justices is in all cases necessary, to justify abatement by the public authorities.

to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the said local board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned (*m*). 11 & 12 Vict. c. 63.

LX. And be it enacted (*n*), that if upon the certificate of the officer of health (if any), or of any two medical practitioners, it appear to the local board of health— Upon certificate of officer of health, &c. that a house, &c. is in an unwholesome condition, local board to require that the same be whitewashed, &c. under penalties.

That any house, or part thereof, is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby,—

Or that the whitewashing, cleansing, or purifying of any house, or part thereof, would tend to prevent or check infectious or contagious disease,—

The said local board shall give notice in writing to

(*m*) *Post*, s. 87, p. 136.

(*n*) Framed upon s. 102 of the Towns Improvement Clauses Act, 1847, and according to the 27th recommendation of the commissioners for inquiring into the state of large towns. The commissioners, however, recommended that the owner should be charged with the expenses in all cases.

Similar provisions are contained in the London Police Act of 1839. The Nuisances Removal and Diseases Prevention Act, 1848, is specially directed against the cases to which this clause applies (s. 1, p. 210); but, as already observed, an order of justices is in all cases necessary for the purpose of proceeding under that Act.

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the owner or occupier of such house, or part thereof, to whitewash, cleanse, or purify the same, as the case may require;

Penalties;

And if the person to whom notice is so given fail to comply therewith within such time as shall be specified in the said notice, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the said local board may, if they shall think fit, cause such house, building, or part thereof, to be whitewashed, cleansed, or purified, and the expenses incurred by them in so doing shall be repaid by the owner or occupier in default, and be recoverable from either of them in the summary manner hereinafter provided (*o*).

and in case of default local board may whitewash, &c. at the expense of owner or occupier.

Slaughter-houses, &c.

Slaughter-houses to be registered.

LXI. And be it enacted, that every building or place used as a slaughter-house (*p*) shall, within three months after this Act is applied to the district in which it is situate, or (in the case of a building or place newly used as a slaughter-house after that time) within three months after the commencement of such user, be registered by the owner or occupier thereof at the office of the said local board, in a book which shall be kept by such board for that purpose;

Penalties for not registering.

And whosoever uses, or suffers to be used, any building or place as a slaughter-house without its being

(*o*) See *post*, s. 129, p. 180.

(*p*) The term "slaughter-house" includes knackers' yards (s. 2, *ante*, p. 11).

registered as required by this Act, shall be liable, for every such offence, to a penalty not exceeding five pounds, and a further penalty not exceeding ten shillings for every day during the continuance of the offence after written notice thereof from the said local board (*q*). 11 & 12 VICT. c. 63.

LXII. And be it enacted (*r*), that the local board of health may from time to time, if they shall think fit, provide premises for the purpose of being used as slaughter-houses (*s*);

Local board may provide slaughter-houses, and make bye-laws with respect to all slaughter-houses,—

And they shall make bye-laws (*t*)—

For and with respect to the management and charges for the use of the premises so provided;

And with respect to the inspection of all slaughter-houses, and for keeping the same in a cleanly and proper state:

(*q*) This sentence is framed upon ss. 126, 127 of the Towns Improvement Clauses Act. As to the recovery and application of penalties, see ss. 129, 133; pp. 181, 185.

(*r*) By a statute of 4 Hen. 7 (c. 3), it was enacted, that "no butcher nor his servant slay no manner of beast" "*within the walls* of London," upon pain to forfeit for every ox twelve pence, and every cow and every other beast eight pence," "the one half to the king and the other half to the informer," who should sue for the same by action of debt. "And over this it was enacted," that the Act should extend, and be observed and kept in every city, borough and town *walled* within England, except Berwick and Carlisle. The statute has become obsolete, for which it is not difficult to assign reasons, seeing that it is confined to walled towns, and further (it would seem), to parts within the walls; that the penalties (in modern times at least) would not be very ruinous; and that the penalties, such as they are, were to be recovered by action of debt. See s. 64, p. 103.

(*s*) See Towns Improvement Clauses Act, s. 134.

(*t*) As to bye-laws in general, see s. 115, *post*, pp. 163-165.

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but not so as to affect rights of certain companies.

Provided always, that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities of any persons incorporated by any local Act of parliament, passed before the passing of this Act, for the purpose of making and maintaining slaughter-houses for the accommodation of any city, town, borough or place (*u*).

Power to inspector of nuisances to enter places used for sale of butcher's meat, &c.

LXIII. And be it enacted (*v*), that the inspector of nuisances may, and he is hereby empowered, at all reasonable times, with or without assistants, to enter into and inspect any shop, building, stall or place kept or used for the sale of butcher's meat, poultry, or fish, or as a slaughter-house, and to examine any animal, carcase, meat, poultry, game, flesh, or fish which may be therein; and in case any animal, carcase, meat, poultry, game, flesh, or fish appear to him to be intended for the food of man, and to be unfit for such food, the same may be seized;

Meat, &c unfit for food to be seized, &c.

And if it appear to a justice (*w*), upon the evidence of a competent person, that any such animal, carcase, meat, poultry, game, flesh, or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food;

(*u*) This proviso was framed with a view to the Wakefield borough market company, who are empowered by a local Act (10 & 11 Vict. c. 99) to make and maintain slaughter-houses for the accommodation of the borough.

(*v*) Framed upon s. 31 of the Towns Improvement Clauses Act, s. 31.

(*w*) As to the course of proceeding, see *post*, s. 131.

11 & 12 Vict. c. 63.

and persons having custody of it to be liable to penalties.

And the person to whom such animal, carcase, meat, poultry, game, flesh, or fish belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every animal or carcase, fish, or piece of meat, flesh, or fish, or any poultry or game so found, which penalty may be recovered before two justices in the manner hereinafter provided with respect to penalties, the recovery whereof is not expressly provided for (*x*).

Offensive trades newly established to be subject to regulation of local board of health.

LXIV. And be it enacted, that the business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description (*y*), soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture, shall not be newly established in any building or place, after this Act is applied to the district in which such building or place is situate, without the consent of the local board of health,—

Appeal to the general board.

Unless the said general board shall otherwise direct;

And whosoever offends against this enactment shall be liable, for each offence, to a penalty of fifty pounds, and a further penalty of forty shillings for each day during which the offence is continued (*y*):

(*x*) As to the recovery and application of penalties, see *post*, ss. 129, 133; pp. 181, 185.

See also the temporary Act (11 & 12 Vict. c. 107, s. 3), by which a power to seize unwholesome meat, &c. is given to clerks of markets, inspectors, constables, policemen, and others specially authorized in that behalf.

(*y*) See note (*r*) *ante*, p. 101.

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Bye-laws with respect to offensive trades.

And the said local board may from time to time make such bye-laws (*z*) with respect to any such businesses so newly established as they may think necessary and proper, in order to prevent or diminish the noxious or injurious effects thereof (*a*).

Act not to affect present law as to nuisances.

LXV. And be it declared and enacted, that nothing in this Act shall be construed to render lawful any act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof (*b*).

Common Lodging-houses;

To be registered, &c.

LXVI. And be it enacted (*c*), that it shall not be lawful to keep any common (*d*) lodging-house

(*z*) As to bye-laws in general, see *post*, s. 115, pp. 163-165.

(*a*) Provisions for the regulation and removal of offensive trades are contained in the Metropolitan Buildings' Act (7 & 8 Vict. c. 84, ss. 51, 61). See also Towns Improvement Clauses Act, s. 104.

By s. 8 of the Nuisances Removal and Diseases Prevention Act, 1848, *post*, p. 225, hospitals for the reception of patients afflicted with infectious or contagious diseases cannot be newly opened without the consent of the general board of health.

(*b*) This section, therefore, leaves untouched the remedies given by the common and statute law, both with respect to public and private nuisances. See also s. 134, p. 186.

(*c*) This section is framed upon the 28th recommendation of the commissioners for inquiring into the state of large towns, &c.; viz., "that provision should be made for the regulation of lodging-houses for the reception of vagrants, trampers, and other such wayfarers." (2nd Report, p. 67.)

(*d*) The term "common lodging-house," which occurs throughout this section was adopted by the House of Commons

unless the same be registered as next hereinafter mentioned; and the local board of health shall cause a register to be kept, in which shall be entered the name of every person applying to register any com- 11 & 12 Vict. c. 63.

after great consideration. The Lords proposed to define the term to mean "any public lodging-house, not being a licensed victualling house, in which persons are harboured or lodged for hire for a single night, or less than a week at one time, or in which any room is let for hire, to be occupied by more than one family at one time." The Commons, however, disagreed to this definition, considering that it "would include many houses not within the purview of the section." It may be added, that the terms of the definition were recommended by the select committee of the House of Lords, to whom the measure was referred, after much discussion; and it was afterwards introduced into the clause for the regulation of lodging-houses, in the City of London Sewers Act, 1848, s. 91, which was considered in both houses some days after the present Act had been disposed of.

In the copies printed by the Queen's printer, the first part of this clause stands thus,—"it shall not be lawful to keep any common *public* lodging-house;" but the word "public" is not to be found in the ingrossment. The copy first printed for the Lords (which is a transcript of the ingrossment in the state in which it originally left the House of Commons), and the two other copies printed for their lordships, before the bill was returned to the Commons with amendments, are correct in this particular. The mistake first occurred in the copy exhibiting the amendments of the Lords, printed for the House of Commons; the copy printed for the Lords, exhibiting the amendments of the Commons upon the amendments of the Lords, adopted the error; and the last-mentioned copy being set up in the identical type from which the Queen's printer's copy of the Act of parliament is printed, the discrepancy between it and the record is at once accounted for. (See the evidence taken before the select committee on printing, p. 25, question 184; and see also p. 24, question 178.) [Since this note was printed the error has been amended, and the copies issued by the Queen's printer since the 9th of November are correct in the particular referred to].

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mon lodging-house kept by him, and the situation of every such house;

Local board to make bye-laws for regulating common lodging-houses,

And the said local board shall from time to time make bye-laws (*d*)—

For fixing the number of lodgers who may be received into each house so registered;

For promoting cleanliness and ventilation therein;

And with respect to the inspection thereof; and the conditions and restrictions under which such inspection may be made;

and may authorize entry of any such lodging-house.

And the person keeping any such lodging-house shall give access to the same when required by any persons who shall produce the written authority of the said local board in this behalf, for the purpose of inspecting the same, or for introducing or using therein any disinfecting process;

Expense of purifying, &c.

And the expenses incurred by the said local board, in so introducing or using any disinfecting process, shall be recoverable by them in a summary manner from the person keeping the lodging-house in which the same shall have been used or introduced;

Penalty for failing to register, or refusing to allow inspection, &c.

And whosoever shall receive lodgers in any common lodging-house without having registered the same as required by this Act, or shall refuse to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon, any person authorized by the said local board as last aforesaid, shall for every such offence be liable to a penalty not exceeding forty shillings.

(*d*) See generally with respect to bye-laws of the local board, *post*, s. 115, pp. 163-165.

11 & 12 Vict. c. 63.

Cellars, &c. newly built, &c. not to be separately let as dwellings.

LXVII. And be it enacted, that it shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any vault, cellar, or underground room built or rebuilt after the passing of this Act, or which shall not have been so let or occupied before the passing of this Act:

No cellars, &c. to be let separately as dwellings except under conditions, as to (*e*)—

And it shall not be lawful to let or continue to let, or to occupy or suffer to be occupied, separately as a dwelling, any vault, cellar, or underground room whatsoever,—

1. Height within.

Unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof;

2. Height above ground.

Nor unless the same be at least three feet of its height above the surface of the street or ground adjoining or nearest to the same;

3. Width of outside area.

Nor unless there be outside of and adjoining the same vault, cellar, or room, and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part (*f*);

(*e*) The conditions with respect to the letting of cellars, &c. are principally re-written from the Liverpool Act of 1846, s. 118. The Metropolitan Buildings' Act (7 & 8 Vict. c. 84, s. 53), and Schedule (K) of the same Act, contain somewhat similar provisions. General provisions for the regulation of cellars, &c. used as dwellings were recommended by the commissioners for inquiring into the state of large towns (24th recommendation, 2nd Report, p. 60).

(*f*) See provision *post*, p. 109, with respect to steps in cellar areas.

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4. Drainage. Nor unless the same be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room;

5. Privies. Nor unless there be appurtenant to such vault, cellar, or room, the use of a watercloset or privy, and an ashpit, furnished with proper doors and coverings, kept and provided according to the provisions of this Act (*g*);

6. Ventilation. Nor unless the same have a fireplace with a proper chimney or flue;

7. Light, &c. Nor unless the same have an external window (*h*) of at least nine superficial feet in area clear of the sash frame, and made to open in such manner as shall be approved by the surveyor, except in the case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room, as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash frame:

(*g*) See ss. 49, 51, 54, *ante*, pp. 80-82, 87, 88, 91-93.

(*h*) By s. 151, p. 202, it is provided, that the opening of a window under this clause shall not render a house, containing seven windows only, at the time of the passing of this Act, liable to the duties payable upon a house with eight windows.

The Liverpool Act of 1846 (s. 121) prescribes that the window shall be a casement window, opening on hinges or pivots, unless the sashes are double, and made to open both at top and bottom. It seems better that these details should be left to the discretion of the surveyor, as settled by the present Act.

11 & 12 Vict. c. 63.

Penalties for letting, &c. contrary to the Act.

And whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, for hire or rent, any vault, cellar, or underground room, contrary to this Act, shall be liable, for every such offence, to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied, after notice in writing from the local board of health in this behalf:

Proviso with respect to steps for access to cellars, &c.,

Provided always, that in any area (*i*) adjoining a vault, cellar, or underground room, there may be steps necessary for access to such vault, cellar, or room, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such vault, cellar, or room a clear space of six inches at the least;

or to buildings above cellars.

And that over or across any such area (*i*) there may be steps necessary for access to any building above the vault, cellar, or room to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window:

What to be deemed occupation as a dwelling.

Provided also, that every vault, cellar, or underground room in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act:

Provisions with respect to cellars, &c. occupied as dwellings before the—

Provided also, that the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms shall not, so far as the same

(*i*) See *ante*, p. 107.

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statute, not to come into operation until after certain time.

relate to vaults, cellars, and underground rooms which shall have been let or occupied as dwellings before the passing of this Act, come into force or operation until the expiration of one year from the passing of this Act, nor within any district until the expiration of six months from the time when this Act shall have been applied thereto:

Churchwardens, &c. immediately, and from time to time, to give notice of enactments.

And (*i*) all churchwardens and overseers of the poor shall from time to time after the passing of this Act cause public notice of the provisions of this Act, with respect to the letting and occupation of vaults, cellars, and underground rooms, to be given in such manner as may appear to them to be best calculated to make the same generally known.

Management of Streets.

Highways vested in local board,

LXVIII. And be it enacted, that all present and future streets, being or which at any time become highways within any district, and the pavements, stones, and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, shall vest in and be under the management and control of the said local board of health (*k*):

(*i*) By this clause churchwardens and overseers are required to give notice from time to time *after the passing of this Act*, although the parishes for which they act may not be included within any "district" constituted for the purposes of the Act.

(*k*) This and the two following sections are framed with a view to the 12th recommendation of the commissioners for inquiring into the state of large towns, viz., "that the whole

11 & 12 Vict. c. 63.

and to be repaired, &c. by local board.

And the said local board shall from time to time cause all such streets to be (*l*) levelled, paved, flagged, channelled, altered and repaired (*m*), as and when occasion may require;

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of the paving, and the construction of the surface of all streets, courts, and alleys, be placed under the management of the same authority as the drainage, and that the limits of the jurisdiction, wherever practicable," be co-extensive (2nd Report, p. 36). See the City of London Sewers Act, 1848, s. 119.

(*l*) Sewerage works are included in the two following sections; but provisions upon that head would be unnecessary in the present section, inasmuch as by s. 45 (p. 77), the local board are required to make such sewers as may be necessary for draining their district for the purposes of the Act. See the City of London Sewers Act, 1848, s. 120.

(*m*) The effect of this and the two following sections may be thus summed up:—By the present section the duty of repairing and keeping in order all highways is cast solely on the local board of health constituted under the Act. Section 70 enables the local board to take under their management any street, court, or alley, &c. which shall have been put in order to their satisfaction, unless the owners of property object thereto; and section 69 gives power to require the owners and occupiers of property to put in proper order any street, &c. in bad condition which may not have already become vested in the board. In the latter case, upon the default of the owners or occupiers, the local board may put the street in order, and recover the expenses incurred by them, either from the owner in one sum, or from time to time by instalments, or they may recover from the occupier by means of a rate spread over any period not exceeding thirty years. (See *ante*, pp. 82, 83, note *f*). The expenses are so charged in accordance with the 12th recommendation of the commissioners for inquiring into the state of large towns, (2nd Report, p. 36.)

By section 117, pp. 166, 167, the office of surveyor of highways within districts under the Act is transferred to the local boards, but existing surveyors of highways may recover highway rates in arrear. By s. 118, p. 168, liabilities to repair *ratione tenuræ* are saved.

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Laws of highways may be altered, &c.

And they may from time to time cause the soil of any such street to be raised, lowered, or altered as they may think fit, and place and keep in repair fences and posts for the safety of foot passengers;

Penalties for displacing pavements, &c.

And whosoever wilfully displaces, takes up, or injures the pavement, stones, materials, fences, or posts of any such street, without the consent of the said local board, shall be liable, for every such offence, to a penalty (*n*) not exceeding five pounds, and a further sum not exceeding five shillings for every square foot of the pavement, stones, or other materials so displaced, taken up, or injured.

Local board may require owners and occupiers to put in order private streets,

LXIX. And be it enacted, that in case any present or future street, or any part thereof (not being a highway), be not sewered (*o*), levelled, paved, flagged, and channelled to the satisfaction of the local board of health, such board may, by notice in writing to the respective owners or occupiers of the premises fronting, adjoining, or abutting upon such parts thereof as may require to be sewered, levelled, paved, flagged, or channelled, require them to sewer, level, pave,

(*n*) As to the recovery and application of penalties, see *post*, ss. 129, 133; pp. 181, 185. The section in the text embodies ss. 47, 51, 52, 56 of the Towns Improvement Clauses Act, 1847.

(*o*) By section 45, p. 77, the *duty* of providing sewers is cast upon the local board, and this section *enables* the board, if they think proper, to require the owners or occupiers of property in any street which has not become a highway to construct the necessary sewers in the first instance at their own expense. See City of London Sewers Act, 1848, s. 122.

flag, or channel the same within a time to be specified in such notice; 11 & 12 Vict. c. 63.

and upon their default may execute the works, and charge them with the expense.

And if such notice be not complied with, the said local board may, if they shall think fit, execute the works mentioned or referred to therein; and the expenses incurred by them in so doing shall be paid by the owners in default, according to the frontage of their respective premises, and in such proportion as shall be settled by the surveyor, or in case of dispute as shall be settled by arbitration (having regard to all the circumstances of the case) in the manner provided by this Act (*p*); and such expenses may be recovered from the last-mentioned owners in a summary manner, or the same may be declared by order of the said local board to be private improvement expenses, and be recoverable as such in the manner hereinafter provided (*q*).

Any street whatever, if in proper order, may be taken under the management of the local board,

LXX. And be it enacted, that if any present or future street, not being a highway at the time when this Act is applied to the district in which it is situate, be sewered, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, the said local board may, if they shall think fit, by notice in writing put up in any part of the street (*r*),

(*p*) See *post*, ss. 123—128, pp. 175—179.

(*q*) See *ante*, pp. 82, 83, note (*f*). This section is framed upon ss. 106, 108, 109 of the Manchester Improvement Act, 1844.

(*r*) This provision will dispense with the difficulties which arise under the ordinary provisions of local Acts as to whether notice has been properly given.

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declare the same to be a highway, and thereupon the same shall become a highway, and be from time to time repaired by them out of the rates levied in that behalf under the authority of this Act; and every such notice shall be entered amongst the proceedings of the said local board:

unless proprietors, within a month, object thereto.

Provided always, that no street shall become a highway as last aforesaid if within one month after notice in writing shall have been put up as last aforesaid the proprietor of such street, or the person representing or entitled to represent such proprietor, shall by notice in writing to the said local board object thereto (*s*).

Power to require gas and water pipes to be moved.

LXXI. And be it enacted, That if and when for the purposes of this Act the local board of health deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks laid in or under any street, they may by notice in writing require the person to whom the pipes, mains, plugs, or works belong to raise, sink, or otherwise alter the situation of the same in such manner and within such reasonable time as shall be specified in such notice, and the expenses attendant upon or connected with any such alteration shall be paid by the said local board out of

(*s*) This proviso was introduced by the committee of the House of Commons. See a clause for a similar purpose in the City of London Sewers Act, 1848, s. 126.

the general district rates levied under this Act (*t*); 11 & 12 Vict. c. 63.

And if such notice be not complied with the said local board may make the alteration required:

Alteration must not occasion permanent injury.

Provided always, that no such alteration shall be required or made which will permanently injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely and conveniently as usual (*u*);

Proprietors of the pipes to be chargeable with expenses in certain cases.

Provided also, that where under any local Act of parliament the expenses attendant upon or connected with the raising, sinking, or otherwise altering the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks, are or shall be directed to be borne by the person to whom such pipes or works belong, his liability in that respect shall continue, in the same manner and under the same conditions in all respects as if this Act had not been passed (*v*).

Notice, showing intended width and level, to be given to local board before

LXXII. And be it enacted, that one month at the least before any street is newly laid out as aforesaid written notice shall be given to the local board of health, showing the intended level and width

(*t*) *See* post, s. 87, p. 136.

(*u*) This section, with the exception of the last proviso, is framed upon ss. 61, 62 of the Towns Improvement Clauses Act, 1847.

(*v*) It appears that by some local Acts gas companies are not only bound to move their mains, &c., when required by the authorities having the charge of the roads, but also to do the necessary works at their own expense.

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thereof; and the level and width of every such street shall be fixed by the said local board (*w*); and it shall not be lawful to lay out, make, or build upon any such street otherwise than in accordance with the level and width so fixed,—

laying out new streets, and they shall fix the level and width.

Unless, upon disapproval by the said local board of the level or width specified in such notice, the general board of health shall otherwise direct:

subject to appeal to general board.

And whosoever shall lay out, make, or build upon any such street otherwise than in accordance with the level and width fixed by the said local board, or approved by the said general board, shall be liable for every such offence to a penalty not exceeding twenty pounds for every day during which he shall permit or suffer such street to continue to be so improperly laid out, made, or built upon (*x*); and the said local board may, if they shall think fit, cause any such street laid out or made at a level or width otherwise than in accordance with the level and width so fixed or approved as aforesaid, or any building built in any such street otherwise than in accordance with such level and width, to be altered in such manner as the case may require, and the expenses incurred by them in so doing shall be repaid to them by the offender, and

Pecuniary penalties for laying out street contrary to level and width fixed;

and streets may be altered, &c. at offender's expense.

(*w*) In all local Acts some absolute width of street is fixed by the legislature; but the present Act will allow the local board to exercise a discretion in each case subject to the revision of the general board of health. *See* ss. 57—60 of the Towns Improvement Clauses Act, 1847.

(*x*) As to the recovery and application of penalties, see *post*, ss. 129, 133; pp. 181, 185.

be recoverable from him in a summary manner (*y*): 11 & 12 Vict. c. 63.

Intended level, &c. may be adopted, if no disapproval, &c. within a month.

Provided always, that if no such level or width be fixed, and no approval or disapproval of the level or width proposed be signified by the said local board within one month from the last-mentioned notice, the intended street may be laid out and made upon the level and of the width specified in such notice, if the same be otherwise in accordance with the other provisions of this Act.

Local board may purchase premises in order to improve streets.

LXXIII. And be it enacted (*z*), that the said local board may, by agreement, purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street; and any part of the premises so purchased which shall not be wanted for that purpose shall be resold at the best price that can be gotten for the same, and the proceeds of such resale shall be carried to the district fund account hereinafter mentioned (*a*).

Public Walks.

Local board may provide, or contribute towards, places of public recreation, &c.

LXXIV. And be it enacted, that the local board of health, with the approval of the said general board, may provide, maintain, lay out, plant, and improve premises for the purpose of being used as public walks or pleasure grounds, and support or

(*y*) *See* post, ss. 129, 133; pp. 180, 185.

(*z*) Founded upon the 22nd recommendation of the commissioners for inquiring into the state of large towns (2nd Report, p. 59). The section is framed upon s. 67 of the Towns Improvement Clauses Act, 1847.

(*a*) See s. 87, p. 135.

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contribute towards any premises provided for such purposes by any person whomsoever (*a*).

Supply of Water.

Local board may provide sufficient supplies of water,

LXXV. And be it enacted (*b*), that the local board of health may provide their district with such a supply of water as may be proper and sufficient for the purposes of this Act, and for private use to the extent required by this Act;

and purchase, take upon lease, or erect waterworks;

And for those purposes, or any of them, the said local board may (*c*) from time to time, with the approval of the general board of health, contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, maintain such waterworks (*d*), and do and execute all such works, matters and things as shall be necessary and proper;

or contract for supply, &c.;

And any waterworks company may contract with the local board of health to supply water for the

(*a*) Founded upon the 30th recommendation in the report referred to in the last note, and framed partly upon s. 135 of the Towns Improvement Clauses Act, 1847.

(*b*) This section, as well as ss. 76, 77, 78, 93, and 95, are founded upon the 17th, 18th, 19th and 20th recommendations of the commissioners for inquiring into the state of large towns (2nd Report, pp. 52-55).

(*c*) By ss. 46 and 55 it is imperative upon the local board to cause all sewers to be properly "cleared, cleansed, and emptied," and to provide that all streets be properly cleansed and watered. For those purposes, therefore, notwithstanding the permissive words contained in this section, it will be the duty of the local boards to obtain sufficient supplies of water wherever it may be practicable to do so. See *ante*, p. 85, note.

(*d*) See the definition of the term "waterworks," *ante*, s. 2, p. 11.

purposes of this Act in any manner whatsoever, or may sell and dispose of or lease their waterworks to any local board of health willing to take the same; 11 & 12 Vict. c. 63.

And the said local board may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of pure and wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling house within the district supplied: and may lay on water constantly under pressure;

Provided always, that before constructing or laying down any waterworks under the powers of this Act within any limits within, for, or in respect of which any waterworks company shall have been established for supplying water, the said local board shall give notice in writing to every waterworks company within whose limits the said local board may be desirous of laying on or supplying water, stating the purposes for, and (as far as may be practicable) the extent to which water is required by the said local board (*e*); but before constructing waterworks, must give notice to water companies.

(*e*) The City of London Sewers Act, ss. 55, 56, enables the city commissioners of sewers to require "present or future water companies having mains or pipes within the city" to furnish supplies of water in such quantities, at such times, in such places, and upon such terms, as shall be agreed upon between the commissioners and the companies, or in case of disagreement, as shall be settled by two justices.

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and they may not construct waterworks, &c. if any waterworks company within their district be able and willing to furnish a proper and sufficient supply upon terms.

And it shall not be lawful for the said local board to construct or lay down any waterworks within such limits, if and so long as any such company shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said local board, and upon such terms as shall be certified to be reasonable by the general board of health, after inquiry and report by a superintending inspector in this behalf, or (in case such company shall be dissatisfied with such certificate) upon such terms as shall be settled by arbitration in the manner provided by this Act (*f*);

Disputes as to whether company's water be proper and sufficient, to be settled by arbitration.

And in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the said local board, or whether the purposes for which it is required are reasonable, the same shall be settled by arbitration in the manner provided by this Act (*g*).

(*f*) See *post*, ss. 125-128, pp. 177-179.

(*g*) Failing compliance with the terms prescribed, the local board will be at liberty to exercise the powers vested in them by the first part of the clause. The provisoes, whilst they prevent undue interference with private interests, also secure the public against unreasonable prices on the part of the water companies, and improvident expenditure in the construction of new works on the part of the local boards.

11 & 12 Vict. c. 63.

LXXVI. And be it enacted, that if upon the report of the surveyor it appear to the local board of health that any house is without a proper supply of water, and that such a supply of water can be furnished thereto at a rate not exceeding twopence per week, the said local board shall give notice in writing to the occupier, requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose (*h*);

Local board may require that houses be supplied with water, &c. if a supply can be furnished at a rate not exceeding twopence per week;

And if such notice be not complied with, the said local board may, if they shall think fit, do such works, and obtain such supply accordingly, and make and levy water rates upon the premises, not exceeding in the whole the rate of twopence per week, in manner hereinafter provided (*i*), as if the owner or occupier of the premises had demanded a supply of water, and were willing to pay water rates for the same; and the expenses incurred by them in doing such works as last aforesaid shall be private improvement expenses, and be recoverable as such in the manner hereinafter provided (*i*).

and in case of default, they may lay on water, &c., and levy water rates.

(*h*) The City of London Sewers Act, 1848, requires that all houses shall be provided with proper apparatus for receiving a supply of water, and contains efficient provisions for compelling owners and occupiers to procure a proper supply, ss. 105-7.

(*i*) The water rate will be levied from time to time in respect of the water actually supplied; see *post*, s. 93, p. 145.

The private improvement rate will be levied to defray the

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Local board may supply water for public baths, or for trading or manufacturing purposes;

LXXVII. And be it enacted, that the local board of health may, if they shall think fit, supply water from any waterworks purchased or constructed by them under this Act to any public baths or wash-houses, or for trading or manufacturing purposes, upon such terms and conditions as may be agreed upon between the said local board and the persons desirous of being so supplied.

may maintain—

LXXVIII. And be it enacted, that the local board of health may (*k*) cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts and works, used for the gratuitous supply of water to the inhabitants, to be continued, maintained, and plentifully supplied with water, or they may substitute, continue, maintain, and plentifully supply with water other such works equally convenient;

and construct public cisterns, &c. for gratuitous use.

And the said local board may, if they shall think fit, construct any number of new cisterns, pumps, wells, conduits, and works for the gratuitous supply of any public baths or wash-houses established

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cost of providing apparatus, and may be spread over any period not exceeding thirty years. See *post*, p. 141, s. 90.

But both rates will be levied upon the occupier, except when the premises are under the annual value of ten pounds, or are let to weekly or monthly tenants, or in separate apartments at periods shorter than quarterly, in which cases the local board may, if they think proper, call upon the owner to compound or (in case of his refusal to compound) to pay the rates in full. *See* s. 90, p. 141; s. 93, p. 145; s. 94, p. 146; s. 95, p. 146.

(*k*) See the note, *ante*, p. 85.

otherwise than for private profit, or supported out of any poor or borough rates. 11 & 12 Vict. c. 63.

LXXIX. And be it enacted, that—

Whosoever shall wilfully or carelessly break, injure, or open any lock, cock, waste pipe, or waterworks belonging to or under the management or control of the local board of health, or constructed, continued, or maintained (*l*) under this Act, in any parish or place in which there shall be no local board of health,— Penalties for injuring waterworks,

Or shall unlawfully flush, draw off, divert, or take water from any waterworks belonging to or under the management or control of the said local board, or so constructed, continued, or diverting streams,

(*l*) By s. 50, pp. 83—86, the churchwardens and overseers are required in certain cases to provide wells and pumps, which by s. 2 are declared to be included in the term "waterworks." But the clauses (in this and the subsequent section) relating to waterworks, and to penalties in parishes and places where there is no local board of health, are more comprehensive than the present state of the Act requires, inasmuch as they were framed with a view to some amendments of the Lords (in s. 50, p. 83, and s. 77, p. 122), which were afterwards rejected by the Commons upon the ground of interference with privilege (*see* note, *ante*, p. 85). By one of those amendments (in s. 50) the churchwardens and overseers would have been empowered in certain cases to provide water in any manner they might think proper; and by another (in s. 77), the like officers would have been required to *continue, maintain,* and supply with water all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for gratuitous supply. The clauses in this and the following sections were overlooked when the amendments of the Lords were discussed by the Commons, and hence the present state of the text. The oversight, however, is perfectly harmless.

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maintained in any such parish or place, or from any waters or streams by which such waterworks are supplied,—

wasting water.

Or shall wilfully or negligently waste or cause to be wasted any water with which he is supplied by the said local board,—

Shall for every such offence forfeit a sum not exceeding five pounds, and a further penalty of twenty shillings for each day, whilst the offence is continued after written notice in that behalf (*m*), which penalties shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place:

User of streams not to prejudice.

Provided always, that nothing herein contained shall prevent the owner or occupier of any premises through or by which any streams may flow from using the same as they would have been entitled to do if this Act had not been passed (*n*).

Penalties for bathing in water.

LXXX. And be it enacted, That—

Whosoever shall bathe in any stream, reservoir, conduit, aqueduct, or other waterworks belonging to or under the management or control of the local board of health, or in any reservoir, conduit, aqueduct, or other waterworks con-

(*m*) As to the recovery and application of penalties, *see post*, ss. 129, 133; pp. 181, 185.

(*n*) See *post*, s. 143.

structed, continued, or maintained under this Act in any parish or place in which there shall be no local board of health,— 11 & 12 Vict. c. 63.

Or shall wash, cleanse, throw, or cause to enter therein any animal, rubbish, filth, stuff, or thing of any kind whatsoever,— For fouling water— 1. in general.

Or shall cause or permit or suffer to run or be brought therein the water of any sink, sewer, drain, engine, or boiler, or other filthy, unwholesome, or improper water,—

Or shall do any thing whatsoever whereby any water belonging to the said local board or under their management or control, or whereby any water of or contained in any such reservoir, conduit, aqueduct, or other waterworks so constructed, continued, or maintained in any such parish or place as aforesaid shall be fouled,—

Shall for every such offence, forfeit a sum not exceeding five pounds, and a further sum of twenty shillings for each day whilst the offence is continued, after written notice in that behalf (*o*): which penalties shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place:

And whosoever being proprietor of any gas-works, or being engaged or employed in the manufacture or supply of gas,— 2. by gas-works.

(*o*) As to the recovery and application of penalties, *see* post, ss. 129, 133; pp. 181, 185.

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Fouling water by gas, &c., wilfully or negligently.

Causes or suffers to be brought or to flow into any stream, reservoir, conduit, aqueduct, or waterworks belonging to or under the management or control of the said local board, or into any drain or pipe communicating therewith, any washing or other substance produced in the manufacture or supply of gas,—

Or shall wilfully do any act connected with the manufacture or supply of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks is fouled,—

Shall forfeit to the said local board for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours' notice in writing from them in this behalf, a further sum of twenty pounds for every day during which the offence is continued, or during the continuance of the Act whereby the water is fouled; and every such penalty shall be recoverable, with full costs of suit, by action of debt:

Fouling water by gas, &c., in any manner.

And if any water supplied by, belonging to, or under the management or control of the said local board be fouled in any manner by the gas of any such proprietor or person as last aforesaid, he shall forfeit to the local board for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds (*o*) for every day whilst the offence is continued after the expiration of twenty-

(*o*) As to the recovery and application of penalties, see *post*, ss. 129, 133; pp. 181, 185.

four hours' notice in writing from the said local board in this behalf; 11 & 12 Vict. c. 63, s. 80.

Examination of gas pipes, &c. by local board;

And for the purpose of ascertaining whether such water is fouled by the gas of any such proprietor or person the said local board may lay open and examine any pipes, conduits, and works from which the gas is supposed to escape; provided that before beginning so to do twenty-four hours' notice in writing be given to the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, of the time at which the examination is intended to be made;

expenses of examination by whom to be defrayed.

And if upon such examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes, conduits, or works examined, the expenses of the examination shall be paid and borne by the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, and be recoverable from him in the summary manner hereinafter provided (*p*): but if it appear that the water has not been so fouled, then such expenses, and all damages occasioned by the examination, shall be paid by the said local board out of the general district rates levied under this Act (*q*), and be recoverable from them in the summary manner hereinafter provided (*r*).

(*p*) *Post*, s. 129, p. 180.

(*q*) *Post*, s. 87, p. 136.

(*r*) *Post*, s. 129, p. 180, and as to assessing the amount of compensation in case of dispute, see *post*, s. 144, p. 196, and s. 123, p. 175.

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Reception Houses for the Dead.

Local board may provide premises for the temporary reception of the dead previously to interment, and may arrange for the interment of corpses received therein.

LXXXI. And for the purpose of preventing the manifold evils occasioned by the retention of the dead in the dwellings of the poor,—Be it enacted, That the local board of health may, if they shall think fit, provide, fit up, and make bye laws with respect to the management and charges for the use of, rooms or premises in which corpses may be received and decently and carefully kept previously to interment; and the said local board may, upon proper application, and subject to such regulations and at such rates and charges as shall be prescribed by any such bye laws (*r*), make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any rooms or premises so provided in pursuance of this enactment (*s*).

Burial Grounds, &c.

Upon certificate of the general board that any burial—

LXXXII. And be it enacted, That if—

Upon the representation of the local board of health, and after inquiry and report by a superintending inspector, notified to the lord bishop

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(*r*) As to bye laws in general, see *post*, s. 115, pp. 163-165.

(*s*) See some striking evidence upon this subject in Mr. Chadwick's report upon interment in towns, pp. 31—46, (8vo. ed.) Provisions for a similar object are contained in the City of London Sewers Act, 1848, s. 89, and by s. 90 of that Act, the medical officers may order the removal of corpses to rooms provided for the temporary reception of the dead.

See the evidence (in the report just referred to, pp. 46-9) tending to show that the prolonged retention of the dead in the dwellings of the poor is occasioned to a great degree by the difficulty of raising the usually extravagant expense of funerals.

of the diocese, and made, notified, and published in manner hereinbefore directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under this Act (*t*), and after inquiry by such other ways and means as the general board of health may think fit to direct,—

11 & 12 Vict. c. 63.

ground, &c. is dangerous to health, &c. and that means of interment exist within a convenient distance, further interment therein to be prohibited; except in so far as may be allowed by the certificate.

The said general board shall certify (such certificate to be published in the London Gazette, and in some one or more of the public newspapers usually circulated within the district) that any burial ground situate within any district to which this Act is applied is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, or that any church or other place of public worship within any such district is dangerous to the health of persons frequenting the same, by reason of the surcharged state of the vaults or graves within the walls of or underneath the same, and that sufficient means of interment exist within

(*t*) The inquiry must be a public one (s. 8, *ante*, p. 19); and fourteen days' notice of intention to make it, and of a time and place at which the inspector will be prepared to hear all persons desirous of being heard before him, must have been previously given; and such notice must be advertized in one or more newspapers usually circulated in the parish or place to which the place of worship or burial ground in respect of which inquiry is to be made belongs, and must also be affixed to the doors of the principal churches, chapels, buildings, and places where notices are usually affixed within the same parish or place. The report must be in writing and made to the general board of health, and must be published in the parish or place just referred to in such manner as the general board shall direct.

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a convenient distance from such burial ground, church, or place of public worship, it shall not be lawful, after a time to be named in such certificate, to bury or permit or suffer to be buried any further corpses or coffins in, within, or under the ground, church, or place of worship to which the certificate relates, except in so far as may be allowed by such certificate (*u*);

Penalty.

And whosoever, after notice of such certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin contrary to this enactment, shall for every such offence be liable to a penalty of twenty pounds (*v*).

Interments within newly built churches prohibited;

LXXXIII. And be it enacted, that no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any district after the passing of this Act:

and no burial ground to be newly formed without consent of general board.

And no burial ground shall be made or formed within any district after the passing of this Act, without the consent of the general board of health

(*u*) This exception is for the purpose of enabling the general board to reserve existing rights of interment in family vaults, where it appears that further interment therein would not be prejudicial to health. The City of London Sewers Act, 1848, prohibits interment in graves in which there would not be as much as five feet of soil between the coffin and the ordinary surface of the burial ground, but expressly provides that the prohibition shall not apply to vaults or catacombs, ss. 110, 112.

(*v*) As to the recovery and application of these penalties, *see* ss. 129, 133, *post*, pp. 181, 185.

first had and obtained, unless the same be made or formed upon land purchased, or authorized by parliament to be appropriated, for the purpose of being used as a burial ground before the passing of this Act (*w*); 11 & 12 Vict. c. 63.

And whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault, grave, or burial ground constructed, made, or formed contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt. Penalties.

Purchase, &c. of Lands.

LXXXIV. And be it enacted, that the local board of health, by agreement, may purchase, or take upon lease, sell, or exchange, any lands or premises for the purposes of this Act; Local boards may purchase lands, &c. under Lands Clauses Act, 8 & 9 Vict. c. 18:

And the Lands Clauses Consolidation Act, 1845,—

Except the parts and enactments of that Act with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the recovery of forfeitures, penalties, and costs, and with respect to lands acquired by the promoters of the undertaking, but which shall not be wanted for the purposes thereof,—

Shall, in so far as the same is consistent with parts of that Act incorporated with this.

(*w*) This clause was framed not only with the view of preventing the formation of additional burial grounds in populous localities, but also for the purpose of securing proper site, soil, and aspect, as to the importance of which see Mr. Chadwick's report upon interment in towns, pp. 127—132 (8vo. ed).

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this Act, be incorporated with this Act; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the local board of health mentioned in this Act;

Lands, &c. may be held by local board of non-corporate districts as a body corporate.

And all lands and premises which shall be purchased, hired, or taken on lease by the local board of health of any non-corporate district shall be conveyed, demised, and assured to such local board and their successors, in trust for the purposes of this Act, and shall be accepted, taken, and held by them as a body corporate (*x*).

Contracts.

LXXXV. And be it enacted (*y*), that the local board of health may enter into all such contracts as may be necessary for carrying this Act into execution;

Local board may enter into contracts.

Form and particulars of contracts above 10*l.*

And every such contract whereof the value or amount shall exceed ten pounds,—

(*x*) A similar clause enabling the churchwardens and overseers of the poor to take lands, &c. as a body corporate for certain purposes is contained in the Act 59 Geo. 3, c. 12, s. 17. The provision does not constitute the board a corporation, but merely invests them with certain facilities which they would have enjoyed if they had been so constituted.

(*y*) The several provisions in this clause were framed upon ss. 56—58 of the Commissioners Clauses Act, 1847, with the exception of the provisions relating to the surveyor's estimate and report, which were framed upon s. 27 of the Towns Improvement Clauses Act, 1847. Similar provisions will be found in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 65), and in the City of London Sewers Act, 1848, ss. 33—37.

Shall be in writing, and (in the case of a noncorporate district) sealed with the seal of the local board by whom the same is entered into, and signed by five or more members thereof, and (in the case of a corporate district), sealed with the common seal; 11 & 12 Vict. c. 63. To be in writing, &c.

And shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed; Work, &c. to be specified;

And shall fix and specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed: Penalty for breach:

And every contract so entered into, and duly executed by the other parties thereto, shall be binding on the local board by whom the same is executed, and their successors, and upon all other parties thereto and their executors, administrators, successors, or assigns, to all intents and purposes: Binding on local board and successors.

Provided always, that the said local board may compound with any contractor or other person in respect of any penalty incurred by reason of the nonperformance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such local board may seem proper: Local board may compound for penalties in respect of breach of contracts.

Provided also, that before contracting for the execution of any works under the provisions of this Act the said local board shall obtain from the surveyor— Before contracting for *any* work surveyor to make estimates and report;

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An estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same;

Also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise:

and before entering into contracts above the value of 100*l.* public notice to be given,

Provided also, that before any contract of the value or amount of one hundred pounds or upwards is entered into by the said local board, ten days public notice at the least shall be given expressing the nature and purpose thereof, and inviting tenders for the execution of the same; and the said local board shall require and take sufficient security for the due performance of the same.

and security to be taken.

Rates.

Special district rate in respect of public works of a permanent nature.

LXXXVI. And be it enacted, that whenever any expenses are incurred or to be incurred by the local board of health in making, enlarging, altering, arching over, covering, or enclosing any sewer vested or to be vested in them by this Act, or purchased or acquired by them by virtue thereof (*z*), or in or about any other works, matters, and things of a permanent nature, and executed or done for the benefit of any district or part of a district, the said local board shall make and levy, in respect of the premises situate in the district

(*z*) The words "or purchased or acquired by them by virtue thereof" were introduced in committee in the House of Commons, but they are quite unnecessary.

or part of a district for the benefit of which the expenses are incurred or to be incurred, a rate or rates, to be called Special District Rates, of such amount as will be sufficient to discharge the amount of such expenses, and interest thereon, within such period, not exceeding thirty years, as the said local board shall in each case determine (*a*): 11 & 12 Vict. c. 63.

Provided always, with respect to the cost of making any such new sewer, that if it appear to the said local board that any premises were sufficiently drained before the new sewer was made, they shall deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as the said local board may, under all the circumstances of the case, deem to be just (*b*). Deduction from the full amount of rate may be made in certain cases.

LXXXVII. And be it enacted, that the treasurer shall keep a separate account, to be called "the district fund account," and the monies carried to such account under the directions of this Act (*c*) shall be applied by the local board of health in defraying such of the expenses incurred or to be incurred by District fund account.

(*a*) The distinguishing characteristic of the special district rate is, that it is to be levied in respect of the expenses of public works of a permanent nature, and in such manner that the expenses in respect of which it is made shall be paid off within a period of thirty years. (*See* the table of rates, Appendix, *post*, p. 250.

(*b*) Framed upon s. 28 of the Towns Improvement Clauses Act, 1847.

(*c*) Sums are specially directed to be carried to the district fund account in ss. 56, 59, 73, 117, and 133. For an enumeration of subjects and references to pages, see Index, tit. *District Fund Account.*

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the said local board in carrying this Act into execution, and not otherwise expressly provided for, as they may think proper;

General district rate in respect of casual expenses, &c.

And the said local board shall from time to time, when and as often as occasion may require, make and levy, in addition to any other rate, a rate or rates to be called General District Rates, for defraying such expenses as are charged upon that rate by this Act, and such other expenses of executing this Act in any district as are not provided for by any other rate, or defrayed out of the said district fund account (*d*).

(*d*) The general district rate may be levied upon the whole or part of a district, *see* post, s. 89, last proviso, p. 141.

The expenses *specially* charged upon this rate are :—

1. Of preliminary inquiries previously to the application of the Act to such extent and amount as the treasury may direct, s. 11, p. 32.
2. Expenses attendant upon elections of members of local board, s. 30, p. 59.
3. Salaries, &c. to officers of health (s. 40, p. 73), surveyor, clerk, treasurer, and inspector of nuisances (s. 37, p. 67).
4. Of surveys, maps, and plans procured by the local board, s. 42, p. 74.
5. Of draining or cleansing ponds, pools, open ditches, &c. (see note (*h*) to s. 58, p. 97, at the discretion of the local board, s. 58, p. 96.
6. Of maintaining public necessaries, s. 57, p. 95.
7. The expenses of and attendant upon altering the situation of gas pipes, &c. laid down in streets, s. 71, pp. 114, 115.
8. The expenses, &c. occasioned by the examination of gas pipes, &c. in order to ascertain whether water is fouled by escapes therefrom, s. 80, p. 127.
9. Compensation for damage occasioned by the local board may be charged upon the general or special district rates at the discretion of the local board, s. 144, p. 196.

LXXXVIII. And be it enacted, that the said special and general district rates shall be made and levied upon the occupier (except in the cases hereinafter provided) (*e*) of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property ascertained by the rate (if any) for the relief of the poor made next before the making of the respective assessments under this Act: 11 & 12 Vict. c. 63. Property assessable to special and general district rates to be levied upon the basis of poor rates.

And for the purpose of making any such assessment the local board of health, or any person appointed by them so to do, may from time to time, at all reasonable times, inspect, take copies of, or make extracts from, any rate for the relief of the poor within their district, or any assessments by which the same are made; and whosoever, having the custody of such last-mentioned rate or assessment, refuses to permit such inspection, or the taking of any such copy or extract, shall for every such offence be liable to a penalty not exceeding five pounds: Poor rates to be open to inspection for purpose of assessment. Penalty for refusing inspection, &c.

Provided always, that if in any district or part of a district there be no rate for the relief of the poor the said special and general district rates shall be made upon an estimate of the net annual value In any district in which there is no rate for relief of the poor,

(*e*) That is to say, where the annual value of the premises assessable does not exceed ten pounds, or where they are let to weekly or monthly tenants, or in separate apartments, and the rents are reserved at periods shorter than quarterly, in which cases the local board may call upon the owner to compound or (in case of refusal to compound) charge him with the rates in full. (*See* s. 95, pp. 146, 147.)

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rates to be made in manner prescribed by Parochial Assessment Act,

6 & 7 W. 4, c. 66.

of the several premises liable thereto in such district or part of a district, by a fit person appointed by the local board of health in that behalf; and such estimate shall be made, as near as circumstances will permit, in the manner prescribed by an Act passed in the seventh year of the reign of King William the Fourth, intituled "An Act to regulate parochial assessments," or any other Act for the time being in force for regulating parochial assessments (*f*):

Certain property to be rated only upon one fourth of net annual value.

Provided also, that the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal, or towing path for the same (*g*), or as a railway, constructed under the powers of any Act of parliament, for public conveyance, shall be assessed in respect of the same in the proportion of one fourth part only of such net annual value thereof (*h*):

(*f*) By this Act (s. 1), the net annual value is to be calculated upon the rent at which the property rated may reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and tithe commutation rent-charge (if any), and deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent.

(*g*) The words "or towing path for the same" were added in the House of Lords; and upon reference to the Speaker of the House of Commons, he considered that as the amendment was only in furtherance of the original intention of the Commons it was not objectionable as being an interference with privilege. An entry to that effect will appear upon the Commons' journals,

(*h*) The property mentioned in this proviso will, of course,

Provided also, that if within any district or part of a district any kind of property shall before the passing of this Act have been exempted from rating by any local Act, in respect of all or any of the purposes for which general or special district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but not further or otherwise, be exempt from assessment to any general or special district rates under this Act.

11 & 12 Vict. c. 63.

Exemptions under local Acts to be observed.

LXXXIX. And be it enacted, that the local board of health may make and levy the said special and general district rates, or any or either of them, prospectively, in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses which may have been incurred at any time within six months (*i*) before the making of the rate:

Rates may be prospective or retrospective.

And if at the time of making any general or special district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not

No person to be charged whilst premises are unoccupied.

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be benefited only in a minor degree by the works executed under this Act.

(*i*) This limitation upon the retrospective operation of rates was introduced by the committee of the House of Commons.

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be charged upon any person in respect of the same whilst they continue to be unoccupied (*i*);

Incoming tenants to be charged with proportion of outstanding rates.

And if any such premises are afterwards occupied during any part of the period for which the rate was made, and before the same shall have been fully paid, the name of the incoming tenant shall be inserted in the rate; and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made;

Rates to be apportioned between outgoing and incoming tenants, &c.

And if any owner or occupier assessed or liable to any such rate cease to be owner or occupier of the premises in respect whereof he is so assessed or liable before the end of the period for which the rate was made and before the same is fully paid off, he shall be liable to pay only such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier; and in every such case, if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable:

(*i*) Private improvement rates are to be charged upon the owner whilst the premises are unoccupied (s. 90, note (*n*), *post*, p. 143). Water rates will be payable in advance (s. 93, *post*, p. 145).

11 & 12 Vict. c. 63.

Parts of district may be separately assessed.

And the said local board may from time to time divide their district, or any street therein, into one or more parts, for all or any or either of the purposes of this Act, and make a separate assessment upon any such part for and in respect of all or any of the purposes for which the same is formed; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act: Provided always, that if any expenses are incurred or to be incurred in respect of two or more parts of a district in common the same shall be apportioned between them in a fair and equitable manner.

Private improvement rates in respect of expenses incurred by the local board in the improvement of house drainage, &c.

XC. And be it enacted, that whenever the local board of health have incurred or become liable to any expenses which by this Act are (*k*) or by the said local board shall be declared to be private improvement expenses, the said local board may, if they shall think fit, make and levy upon the occupier of the premises in respect of which the expenses shall have been incurred, except in the cases herein-

(*k*) *See* s. 76, (p. 121), which directs that expenses incurred by the local board in providing apparatus for receiving supplies of water for domestic use, &c. shall always be deemed private improvement expenses. In all other cases in which this rate may be made the local board is invested with a discretion as to the mode in which, and the persons from whom (*i. e.* whether owners or occupiers) expenses in the nature of private improvement expenses may be recovered. See *ante*, p. 82, note (*f*). and *infra*, p. 142, note (*m*).

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after provided (*l*), in addition to all other rates, a rate or rates, to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds in the hundred, in such period not exceeding thirty years as the said local board shall in each case determine (*m*): provided always, that whenever any premises in respect of

To be charged upon owners whilst

(*l*) See the cases in which the owner may be called upon, s. 95, *post*, p. 146.

(*m*) The expenses in respect of which this rate may be charged are as follows:—

1. Of constructing and laying house drains, (s. 49, p. 82).
2. Of constructing (s. 51, p. 88), or putting in order (s. 54, p. 93), waterclosets, privies, or ashpits for private houses.
3. Of draining, cleansing, covering, or filling up offensive ditches, &c. situated upon the premises of private individuals (s. 58, p. 96).
4. Of putting in order streets not dedicated to the public (s. 69, p. 113).
5. Of providing apparatus for receiving supplies of water for domestic use in certain cases (s. 76, p. 121).

But the expenses in respect of which this rate may be made can only be incurred by the local board in case the owners and occupiers make default in executing the works themselves. (*See* the sections above referred to in this note).

By the next section (91, p. 143), it is provided that a very large proportion of the sum paid by the occupier may be deducted by him from his rent. Inasmuch therefore as the rate will in most cases be distributed over a considerable number of years, the very small sum which must be borne by the tenant will be in the nature of a slight addition to rent for increased beneficial enjoyment.

Private improvement rates may be redeemed by the owner or occupier, p. 144. (See also the table of rates, Appendix, *post*, p. 250).

which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge upon and be paid by the owner of the premises so long as the same continue to be unoccupied (*n*). 11 & 12 Vict. c. 63. premises are unoccupied.

XCI. And be it enacted, that if the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rack-rent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord; and if he hold at a rent less than the rack-rent, he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rack-rent; Proportion of private improvement rate may be deducted from rent;

And if the landlord from whose rent any deduction is made under the provision last aforesaid is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the and deductions may be made by intermediate landlords holding for a term whereof less than twenty years are unexpired:

(*n*) The private improvement rate being a separate rate upon each property, it is necessary to charge it upon the owner whilst the premises are unoccupied. The special and general district rates stand upon a different footing, for, as they will be charged upon the whole or part of a district including several properties, a calculation of the probable losses arising from unoccupied premises can be more safely made and the amount necessary to be raised regulated accordingly. (*See* s. 89, *ante*, p. 140).

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same for a term of which less than twenty years is unexpired, but not otherwise (*o*), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him; and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof:

but no deduction to be greater than amount actually received.

Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him (*p*).

Redemption of special district and private improvement rates.

XCII. Provided always, and be it enacted, that at any time before the expiration of the period for which any special district rate or private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the local board of health the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same.

(*o*) Where *more* than twenty years are unexpired, the interest of the superior landlord would be so remote that he could gain but little advantage from the works in respect of which the rates are made.

(*p*) *See post*, s. 97, p. 149, as to agreements, &c. between landlord and tenant, entered into before the application of the Act to the district in which the premises are situate.

11 & 12 Vict. c. 63.

Water rate, in respect of water supplied for private use:

XCIII. And be it enacted, that whenever and so long as any premises are supplied with water by the local board of health for the purposes of domestic use, cleanliness, or drainage, they shall make and levy, in addition to any other rate, a water rate upon the occupier, except as hereinafter provided (*pp*);

how to be assessed,—in general;

And the rate so made shall be assessed upon the net annual value of the premises, ascertained in the manner hereinbefore prescribed with respect to the said special and general district rates (*q*);

in case of several premises supplied by one pipe.

And when several houses in the separate occupation of several persons are supplied by one common pipe, the respective houses shall be charged with the payment of water rates, in the same manner as if each house had been supplied with water by a separate pipe (*r*):

Water may be supplied to Oxford and Cambridge universities upon terms other than by rate.

Provided always, that in any district to be called the Oxford or Cambridge district, (*s*) the local board of health, with the consent of the said general board, may supply water to any hall, college, or premises of the university within such district, upon such terms with respect to the mode of paying for such supply as shall from time to time be agreed upon between such university, or any hall or college thereof, and the said local board.

(*pp*) For the cases in which the owner may be called upon to compound or (in case of refusal to compound) to pay the rates in full, see s. 95, pp. 146, 147.

(*q*) See *ante*, s. 88, p. 137.

(*r*) Waterworks Clauses Act, 1847, s. 70.

(*s*) See s. 31, pp. 60, 61.

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XCIV. And be it enacted, that the said water rate shall be payable in advance;

Water rate payable in advance.

And whenever any person supplied with water under the provisions of this Act neglects to pay the water rate due from him upon demand, the local board of health may prevent the water from flowing into the premises of the defaulter in such manner as they may think fit, and may recover the arrears due, together with the expenses of stopping the supply, in the manner hereinafter provided with respect to the recovery of rates made under the authority of this Act (*s*):

Power to stop water in case of non-payment of rates.

Liability to penalties, although supply be stopped.

Provided always, that the stopping or cutting off any supply of water by the said local board under this enactment shall not relieve any person from any penalty or liability to which he would have been otherwise subject (*t*).

Local board may call upon the owners of tenements under the annual value of ten pounds, &c., or let to weekly or monthly tenants, or in apartments for short periods, to compound for rates.

XCV. Provided always, and be it enacted, that—

When the net annual value of any premises liable to assessment under this Act does not exceed the sum of ten pounds,—

Or whenever any premises liable to such assessment are let to weekly or monthly tenants,—

Or in separate apartments, and the rents become payable or are collected at any shorter period than quarterly,—

(*s*) See s. 103, pp. 152-154. Penalties for wasting water are prescribed by s. 79, p. 124.

(*t*) This proviso was introduced with a view to the provisions requiring that house drains, &c. shall be kept in a proper state. See *ante*, s. 54, pp. 92, 93.

The local board of health may from time to time, if they shall think fit, compound with the owner of such premises for the payment of all or any of the rates to be made under this Act, upon such reduced estimate of the net annual value, not being less than two-thirds or more than four-fifths of the net annual value at which the premises are then assessed, as the said local board shall deem to be reasonable (*u*); 11 & 12 Vict. c. 63.

And any owner who shall refuse to enter into such composition shall be rated to and pay the rates assessed upon such premises in respect of which the composition is offered; and if at any time the amount of composition, or any rate to which an owner is assessed as last aforesaid, be due and unpaid, the same may be levied by distress and sale of the goods and chattels of the owner in default, wheresoever they may be found, or of the occupier or occupiers of the premises, in the same manner as is hereinafter provided with respect to the recovery of rates made under this Act (*v*): Owners refusing to compound—to pay in full.

Provided always, that no such owner shall be assessed in respect of any increased rent which may become payable to him by reason of his so compounding for or becoming liable to any rates as aforesaid: Owner not to be assessed in respect of increased rent payable by reason of this section.

(*u*) The reduction actually allowed should be according to what may be considered a fair equivalent for the labour and losses incident to the collection of rents upon the property in respect of which the composition is required to be made. (See 2d Report of the commissioners for inquiring into the state of large towns, &c.)

(*v*) See *post*, s. 103, pp. 152-154.

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Occupiers to be liable for the rate, but may deduct the amount paid from their rent.

Provided also, that the occupier or occupiers of any such premises as last aforesaid shall be liable to distress and sale of his or their goods and chattels for the non-payment of such amount of composition or rates as may become due in respect of the premises occupied by him or them during his or their tenancy, but shall never be liable to pay any greater sum than the amount of the rent actually due from him or them for such premises; and he or they may deduct any amount paid by him or them from the rent due, or from time to time becoming due, from him or them, unless there be an agreement to the contrary (*w*); and the receipt for the amount paid by him or them shall to that extent be, as against the owner in default, a sufficient discharge for rent (*x*).

Rates may be remitted on account of poverty.

XCVI. Provided also, and be it enacted, that it shall be lawful for the local board of health to reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof (*y*).

(*w*) See s. 97.

(*x*) The provisions contained in this section are founded upon the 9th recommendation of the commissioners for inquiring into the state of large towns. (2nd Report, p. 30.) Similar provisions are contained in the City of London Sewers Act, 1848, ss. 188, 189, 190, 192.

(*y*) See a similar clause in the City of London Sewers Act, 1848, s. 200. This clause was struck out by the House of Lords, but the amendment was resisted by the Commons, as being an interference with their privileges with respect to taxation. See *ante*, p. 85, note (*g*).

11 & 12 Vict. c. 63.

Prior agreements between landlord and tenant not to be affected.

XCVII. Provided also, and be it enacted, that nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement which shall have been made or entered into between landlord and tenant before this Act is applied to the district in which the premises are situate in respect of which the lease, contract, or agreement was made.

Estimate to be prepared before making rates.

XCVIII. And be it enacted, that the local board of health, before proceeding to make any general or special district rate or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing the several sums required for each of such purposes, the rateable value of the property assessable, and the amount of rate which for those purposes it is necessary to make upon each pound of such value;

To be entered in rate-book.

And the estimate so made shall forthwith, after being approved of by the said local board, be entered in the rate-book, and be kept at their office, open to public inspection during office hours thereat (*z*).

Notice of public rates.

XCIX. And be it enacted, that public notice of intention to make any general or special district rate, and of the time at which it is intended to make the same, and of the place where a statement of the

(*z*) As to estimates before entering into contracts, see *ante*, s. 85, p. 133.

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proposed rate is deposited for inspection, shall be given by the local board of health in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto; but in case of proceedings to levy or recover any rate, it shall not be necessary to prove that such notice was given.

Rates and estimates to be open to inspection, &c.

C. And be it enacted, that any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate made previously thereto, and may take copies of or extracts therefrom without fee or reward;

Penalty for refusing inspection, &c.

And whosoever, having the custody of such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall for every such offence be liable to a penalty not exceeding five pounds (*a*).

Description of owner or occupier in rates if name be unknown.

CI. And be it enacted, that whenever the name of any owner or occupier liable to be rated under this Act is not known to the local board of health, it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description (*b*).

(*a*) As to the recovery and application of penalties, see *post*, s. 129, p. 181, and s. 133, p. 185.

(*b*) A similar provision is contained in the Metropolitan Sewers Act (11 & 12 Vict. c. 112, s. 86), and (so far as it relates to the description of "owners") in the City of London Sewers Act, 1846, s. 86. With respect to the description of

CII. And be it enacted, that the local board of health may from time to time amend any rate made in pursuance of this Act,— 11 & 12 Vict. c. 63. Rates may be amended.

By inserting therein the name of any person claiming and entitled to have his name inserted;

Or by inserting the name of any person who ought to have been assessed;

Or by striking out the name of any person who ought not to have been assessed;

Or by raising or reducing the sum at which any person has been assessed, (if it appear to the said local board that he has been underrated or overrated);

Or by making any other alteration which will make the rate conformable to the provisions of this Act:

And no such amendment shall be held to avoid the rate:

Provided always, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made (*c*), and with respect to him the amended rate shall be considered to have been made at the time when he first received notice of the amendment; and in the case of any person the amount of whose rate is increased Appeal in case of amendment. Notice of amendments in certain cases.

"owners" and "occupiers" in notices. See s. 150, *post*, p. 201.

(*c*) See *post*, s. 135, p. 186, with respect to appeals against rates.

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by the amendment, or whose name is thereby newly inserted as aforesaid, the rate shall not be payable by him until seven days after such notice shall have been given to him (*d*).

Rates, how to be published: when payable; by whom, and how to be collected.

CIII. And be it enacted, that all rates made or collected under the authority of this Act shall be published in the same manner (*e*) as poor rates, and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the local board of health shall from time to time appoint;

Justices may summon defaulters for non-payment, and in default may issue distress warrant.

And if any person assessed to any such rate fail to pay the same when due, and for the space of fourteen days after the same shall have been lawfully demanded in writing, any justice may, and he is hereby empowered to summon the defaulter to appear before him, or any other justice, at a time and place to be mentioned in the summons, to show cause why the rate in arrear should not be paid;

(*d*) This section was framed upon s. 174 of the Towns Improvement Clauses Act, 1847.

(*e*) That is to say, by affixing notice in writing or in print, or partly in writing and partly in print, on or near the doors of all the churches and chapels within the district or part of a district in respect of which the rate is made, previously to the commencement of divine service on the Sunday next after the making of the rate. See 17 Geo. 2, c. 3, s. 1; and 1 Vict. c. 45, s. 12.

and in case the defaulter fail to appear according to the exigency of the summons, or no sufficient cause for nonpayment be shown, the justice may, by warrant under his hand and seal, cause the same to be levied by distress of the goods and chattels of the defaulter: 11 & 12 Vict. c. 63.

Provided always, that if no distress sufficient to satisfy the amount can be found within the jurisdiction of the justice by whom such warrant is granted, and it so appear upon oath before a justice of any other county or jurisdiction in which any goods or chattels of the defaulter may be, the last-mentioned justice shall indorse his signature upon the said warrant (*f*), and thereupon the amount to be levied, or so much thereof as may be unsatisfied, shall be levied of the last-mentioned goods and chattels, in the same manner as if the defaulter had been assessed in the last-mentioned county or jurisdiction; If no sufficient distress, warrant may be backed, &c.

And if any person quit or be about to quit any premises without payment of any rate then due from him in respect of such premises under this Act, and refuse to pay the same after lawful Rate-payers about to quit premises without paying arrears, may be summoned, &c.

(*f*) See the provisions as to backing warrants in 11 & 12 Vict. c. 43, s. 19. The provisions of that Act must be considered as supplemental to the provisions of the statute in the text, except in so far as the same may be inconsistent therewith. In case of inconsistency, the statute in the text (being the later Act of the two) will govern proceedings taken under it.

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demand thereof in writing, any justice having jurisdiction where such person resides, or his goods are found, may, and he is hereby empowered to summon him to appear, at a time and place to be mentioned in the summons, to show cause why the rate so due should not be paid; and in case the defaulter fail to appear, or no sufficient cause for nonpayment be shown, the justice may, by warrant under his hand and seal, cause the sum to be levied by distress of the goods and chattels of the defaulter.

Form of distress warrant.

CIV. And be it enacted, that warrants of distress for the recovery of any rate payable under the authority of this Act may be in the form contained in the schedule (D.) annexed to this Act, (*ff*) or to the like effect;

Penalty upon constables refusing to levy.

And any constable authorized by any such warrant who shall neglect or refuse to make distress or sale pursuant to the same, after being required so to do by a collector of the district in which the rate in arrear was made, shall be liable to a penalty not exceeding five pounds.

Quota of rates to be paid by the universities, &c.

CV. Provided always, and be it enacted, that nothing in this Act shall be deemed to alter or interfere with the liability of the universities of Oxford and Cambridge respectively to contribute in the proportion and manner specified in any local Act under which the Oxford and Cambridge commissioners re-

(*ff*) *Post*, p. 206.

spectively now act towards the expense of paving and pitching, repairing, lighting, and cleansing, under the powers of any such local Act, the several streets, lanes, ways, alleys, passages, and places within the jurisdiction of such commissioners respectively; 11 & 12 Vict. c. 63.

And in case any difference shall arise between either of the said universities and the local board of health with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by the general board of health: Disputes to be settled by general board.

Provided also, that all rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities, halls, and colleges in the same manner in all respects as rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act. Rates under this Act may be recovered from universities in same manner as rates under local Acts.

CVI. And be it enacted, that the production of the books purporting to contain any rate or assessment made under this Act shall alone, and without any other evidence whatsoever, be received as *primâ facie* evidence of the making and validity of the rates mentioned therein. Evidence of rates.

CVII. And be it enacted, that the local board of health may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by *Mortgage of Rates.* Local Board may—

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them in the execution of this Act, borrow and take up at interest, on the credit of the rates authorized to be made or collected under this Act, any sums of money necessary for defraying any such costs, charges, and expenses (*g*);

borrow upon mortgage of rates.

And for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, the said local board may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the respective rates upon the credit of which the sums are borrowed;

And the respective mortgagees shall be entitled to a proportion of the rates comprised in their respective mortgages according to the sums in such mortgages mentioned to have been advanced;

No priority amongst mortgagees.

And each mortgagee shall be repaid the sums so advanced, with interest, without any preference over the others of them by reason of any priority of advance or the date of his mortgage:

Limitation, &c. upon borrowing powers.

Provided always, that the money borrowed under the authority of this Act—

Kind of works.

Shall be borrowed only for works of a permanent nature;

Amount:

And shall not at any time exceed in the whole the assessable value for one year of the premises assessable under this Act within the district or

(*g*) But no money can be borrowed upon the credit of rates without the consent of the general board of health; s. 119, p. 168. Large borrowing powers are contained in the Metropolitan Sewers Act, (11 & 12 Vict. c. 112, s. 106,) and in the City of London Sewers Act, 1848, ss. 207, 208.

part of the district for or in respect of which such money shall be borrowed (*h*); 11 & 12 Vict. c. 63.

How to be charged in general,—

And shall (as far as practicable) be borrowed upon the credit of the respective rates applicable to the works, matters, or things in respect of which the money is required;

In case of districts divided into parts.

And the money borrowed for the purpose of defraying any costs, charges, or expenses incurred or to be incurred in respect of part of a district only shall be charged (as far as practicable) upon the credit of any separate rates made or to be made for the purposes of such part; (*i*) and in case any such costs, charges, or expenses shall apply to or be incurred in respect of two or more of such parts, the money borrowed in respect of the same shall be equitably apportioned by the local board upon any rates made or to be made for the purposes of such parts respectively.

Commissioners of public works may make advances to local boards under 5 & 6 Vict. c. 9.

CVIII. And be it enacted, that the commissioners acting in the execution of an Act passed in the second session of the fifth year of Her Majesty's reign, intituled "An Act to authorize the advance of money out of the consolidated fund, to a limited amount, for carrying on public works and fisheries and employment of the poor, and to amend the Acts authorizing the issue of exchequer bills for the like pur-

(*h*) This and the preceding limitation were introduced in committee in the House of Commons.

(*i*) See s. 86, p. 135; and s. 87, p. 135.

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poses," and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, may, if they shall think fit, make advances to the local board of health of any district for the purposes of this Act, upon the security of the rates to be levied by such board under this Act, and without requiring any further or other security than a mortgage of such rates (*ii*).

Money may be borrowed at lower rates of interest to pay off securities bearing a higher rate.

CIX. And be it enacted, that if the local board of health can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they shall think fit, so borrow accordingly, in order, with the consent of the mortgagee, to pay off and discharge any of the securities bearing a higher rate of interest, and may charge the rates which they may be authorized to mortgage, under this Act with payment of the sum so borrowed, together with the interest thereon, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed upon mortgage (*k*).

(*ii*) The same clause will be found in the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, s. 107.

(*k*) This and the four following clauses are re-written and adapted from the Commissioners' Clauses Act, 1847, ss. 75—80 and 85—87, and they have been adopted in the same form in the Metropolitan Sewers Act, 1848, ss. 108, 109, 110, 115, 112, 113.

11 & 12 Vict. c. 63.

Power to borrow money to pay off former mortgages.

CX. And be it enacted, that if at the time appointed by any mortgage deed for payment of the principal money secured thereby the local board of health are unable to pay off the same, they may, if they shall think fit, borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of the said principal monies, and may secure the repayment of the same, and the interest to be paid thereon, in the same manner in all respects as in the case of monies borrowed for defraying costs, charges, and expenses incurred by the local board of health in the execution of this Act.

Form of mortgage.

CXI. And be it enacted, that every mortgage authorized to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall (in the case of a non-corporate district) be sealed with the seal of the local board of health by or on the part of whom the same is executed, and be signed by five or more members thereof, (or in the case of a corporate district) be sealed with the common seal, and may be made according to the form contained in the schedule (B.) to this Act annexed (*l*), or to the like effect;

Register of mortgages.

And there shall be kept at the office of the local board of health a register of the mortgages upon each rate; and within fourteen days after the date of any mortgage an entry shall be made in the regis-

(*l*) *Post*, p. 205.

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ter of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed; and every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds (*l*).

to be open to inspection.

Transfer of mortgages.

CXII. And be it enacted, that any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in the schedule (C.) to this Act annexed (*m*), or to the like effect;

Register of Transfers.

And there shall be kept at the office of the local board of health a register of the transfers of mortgage charged upon each kind of rate; and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom if executed elsewhere, the same shall be produced to the clerk, who shall, upon payment of the sum of five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and

(*l*) As to the recovery and application of penalties, see *post*, s. 129, p. 183; and s. 133, p. 185.

(*m*) *Post*, p. 205.

upon any transfer being so registered the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the orignal mortgage, and the principal and interest secured thereby; and every such transferee may in like manner transfer his estate and interest in any such mortgage; and no person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage, or any money secured thereby. 11 & 12 Vict. c. 63.

CXIII. And be it enacted, that the interest secured by any mortgage authorized to be made under this Act shall, unless otherwise provided, be paid half-yearly; Interest to be paid half-yearly.

And in order to pay off any monies borrowed and secured by any such mortgage, the local board of health shall in every year, until the same be paid off, appropriate and set apart as a sinking fund such sum as, together with the interest from time to time to accrue thereon, will in the period of thirty years amount to a sum sufficient to repay the monies borrowed and secured by any such mortgage, and shall from time to time cause such sinking fund, and the interest thereon, to be invested in the purchase of exchequer bills or other government securities, and to be increased by accumulation in the way of compound interest or otherwise; Mortgage debts to be paid off by means of a sinking fund.

And whenever the said local board are enabled to pay off one or more of the mortgages charged upon the same property or rate, and are not able to pay off Order of paying off mortgage.

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the whole of the mortgages so charged, they shall, in default of arrangement between the local board of health and the mortgagees, decide by lot the order in which the same shall be paid off.

Receiver may be appointed in certain cases.

CXIV. And be it enacted, that if at the expiration of six months from the time when any principal money or interest has become due upon any mortgage of rates made under this Act, and after demand in writing, the same be not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices, who are hereby empowered, after hearing the parties, to appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid;

Rates, how to be received and apportioned.

And upon such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

Applicant for appointment of receiver must be entitled to certain amount.

Provided always, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application be made by two

or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, monies collectively amounting to that sum. 11 & 12 Vict. c. 63.

Bye-Laws.

CXV. And be it enacted, that all bye-laws made by the local board of health under and for the purposes of this Act (*m*) shall be in writing under their

Bye-laws of local board to be sealed, &c.

(*m*) The bye-laws which may be made by the local board are pointed out in the several sections throughout the Act; and the matters in respect of which they may be made are as follow:—

1. With respect to the summoning, notice, place, management, and adjournment of meetings of the local board of noncorporate districts, and generally with respect to the transaction and management of business of such boards under the Act, s. 34, p. 63.
2. For regulating the duties and conduct of the several officers and servants of the local board, s. 37, p. 66.
3. With respect to the removal by occupiers, or (in case of their default) by the local board, of dust, ashes, rubbish, filth, manure, dung, and soil collected in any house, stable, cowhouse, street, or place, s. 55, p. 94.
4. With respect to the times and manner of emptying cesspools, &c., s. 55, p. 94.
5. For the management of slaughter-houses provided by the local board, and for regulating the charges for the use of the same; also with respect to the inspection of all slaughter-houses and for keeping them in a cleanly state, s. 62, p. 101.
6. For preventing or diminishing nuisances arising from certain trades if newly established, s. 64, p. 104.
7. For regulating the number of lodgers, and for promoting cleanliness and ventilation, in inferior lodging-houses, and with respect to the inspection of such lodging-houses, s. 66, p. 106.
8. For the management of premises provided by the local board for the temporary reception of the dead, pre-

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seal and the signature of any five or more of their number, or (in the case of a corporate district) under the common seal;

may impose penalties;

And the said local board may by any such bye-laws impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of forty shillings for each day after written notice of the offence from the said local board;

may be altered, &c.

And the said local board may alter or repeal any such bye laws by any subsequent bye-laws, sealed and signed or (in case of a corporate district) sealed as last aforesaid:

Mode of fixing amount of penalty.

Provided always, that all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty:

Bye-laws not to be repugnant to law, &c.;

Provided also, that no such bye-laws shall be repugnant to the laws of England or to the provisions of this Act, and the same shall not be of any force or effect unless and until the same be

must be confirmed.

submitted to and confirmed by one of her Ma-

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viously to interment, and for regulating the charges for the use of the same; also with respect to the interment of corpses received into any such premises, and the charges for the same, s. 81, p. 128.

The recovery of penalties imposed by bye laws is regulated by s. 129, *post*, p. 181.

jesty's principal secretaries of state, who is hereby empowered to allow or disallow the same, as he may think proper: 11 & 12 Vict. c. 63.

Provided also, that no such bye-laws shall be confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the district to which such bye-laws relate one month at least before the making of such application; Notice of confirmation to be published.

And for one month at least before any such application a copy of the proposed bye-laws shall be kept at the office of the local board of health, and be open during office hours thereat to the inspection of the rate-payers of the district to which such bye-laws relate, without fee or reward; and the clerk shall furnish every such rate-payer who shall apply for the same with a copy thereof or of any part thereof, on payment of sixpence for every one hundred words contained in such copy. Copies of proposed bye-laws to be open to inspection. and to be furnished to ratepayers.

CXVI. And be it enacted, that all bye-laws made by the local board of health in pursuance of this Act shall be printed, and hung up in the office of the said local board; and copies thereof shall be delivered to any rate-payer of the district to which such bye-laws relate, upon his application for the same. Bye-laws to be printed, &c.

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Powers transferred, &c. (n).

Local board to execute the office of surveyor of highways within their respective districts;

CXVII. And be it enacted, that the local board of health within the limits of their district shall, exclusively of any other person whatsoever, execute the office of and be surveyor of highways, and have all such powers, authorities, duties and liabilities as any surveyor of highways in England is now or may hereafter be invested with or be liable to by virtue of his office by the laws in force for the time being, except in so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act (*o*);

Districts under this Act not to be rated in respect of highways beyond them;

And the inhabitants of any district shall not in respect of any property situate therein be liable to the payment of highway rate or other payment, not being a toll, (*p*) in respect of making or repairing roads or highways within any parish, township, or

(*n*) In the bill originally introduced in the House of Commons a series of clauses were inserted in this place, for the purpose of transferring to the local boards of health the powers contained in local Acts. As the bill now stands, the matter of those clauses will be regulated by provisional order of the general board of health. See s. 10, *ante*, p. 26.

(*o*) See 5 & 6 W. 4, c. 50 (General Highway Act), also 4 & 5 Vict. c. 51; 4 & 5 Vict. c. 59; and Nash's Practical Guide to Surveyors of Highways (4th edition), which contains a concise summary of the powers, duties, and liabilities of those officers. See also *ante*, ss. 70, 72; pp. 113-117.

The Nuisances Removal and Diseases Prevention Act, 1848, renders it imperative upon the surveyors of highways to scour, cleanse, and keep clear, as far as may be practicable, all open ditches, gutters, drains, and watercourses by the side of any highway. See *post*, p. 223.

(*p*) The words "not being a toll" were introduced in committee in the House of Commons with a view to the case of turnpike tolls.

place, or part of any parish, township, or place situate beyond the limits of such district:

but existing surveyors to recover rates in arrear.

Provided always, that the several persons who at the time when this Act is applied to any district are surveyors of highways within the same district may recover any highway rate made in respect of the said district, and then remaining unpaid, in the same manner as if this Act had not been passed; and the money so recovered shall be applied, in the first place, in reimbursing themselves any expenses incurred by them as such surveyors, and in discharging any debts legally owing by them on account of the highways within their jurisdiction; and the surplus (if any) shall be paid by them to the treasurer, and carried to the district fund account mentioned in this Act:

Allowance by justices of rates, &c. unnecessary.

Provided also, that neither the allowance by justices, nor the signature by the local board of health, shall be necessary in the case of any rate made by the local board of health under this Act (*q*).

(*q*) It will be competent to the local board, as surveyors of highways, to levy a rate for certain purposes under the Highway Act (5 & 6 W. 4, c. 50, s. 27), by which it is provided that every rate levied under that Act shall be signed by the surveyor of highways, and allowed by two justices of the peace. The proviso in the text was framed with a view to the section referred to, and originally it was confined in terms to the case of "*highway* rates." The word "highway" was struck out during committee in the House of Commons; but the amendment was unnecessary, as neither allowance by justices nor the

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Reservation of existing liabilities to make sewers, &c.

CXVIII. And be it enacted (*r*), that notwithstanding the application of this Act to any district, the liability of any person whomsoever to defray or contribute towards the expense of making, completing, altering, amending, or maintaining any sewer, or any walls or works for protecting the land against the force or encroachments of the sea, or of paving or flagging or putting in order any street, or part thereof, within the district, shall, if incurred previously to the time when this Act is so applied, continue, and the same may be enforced, as if this Act had not been passed, and the rates to be levied under this Act shall be made only for purposes to which such liability does not extend.

General Superintendence.

Mortgage of rates to be made only with approval of general board.

CXIX. And be it enacted, that it shall not be lawful for the local board of health to borrow or take up at interest any sum or sums of money upon the credit of any rates authorized to be made or collected under this Act, without the previous consent of the general board of health (*s*).

Parties aggrieved by decisions of local board with respect to recovery of

CXX. And be it enacted, that if in any case in which the local board are empowered to recover any expenses incurred by them in a summary manner, or to declare such expenses to be private improve-

signature of the local board is required in the case of any rate made under the statute in the text. (See *ante*, s. 103, p. 152).

(*r*) See the proviso to s. 44 of the Metropolitan Sewers Act, 11 & 12 Vict. c. 112.

(*s*) See *ante*, s. 107, p. 155.

ment expenses (*t*), any person shall deem himself to be aggrieved by the decision of the said local board thereupon, he may, within seven days after notice of such decision, address a memorial to the said general board, stating the grounds of his complaint; and the said general board may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive upon the said local board; and if the said local board shall have proceeded to recover such expenses in a summary manner, the said general board may, if they shall think fit, direct the said local board to pay to the person so proceeded against such sum as they may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.

11 & 12 Vict. c. 63.

certain expenses may memorialize the general board.

CXXI. And be it enacted, that during any inquiry by a superintending inspector under this Act (*u*),—

Superintending inspectors may summon witnesses, call for plans, rates, &c.

(*t*) The cases in which this discretion is given are as follow:—

1. In charging the expense of constructing or laying down house drains (s. 49, p. 82).
2. In charging the expense of constructing (s. 51, p. 88), or putting in order waterclosets, privies, or ashpits for private houses (s. 54, p. 93).
3. In charging the expenses of draining, cleansing, covering, or filling up offensive ditches, &c. (s. 58, p. 96).
4. In charging the expense of putting in order private streets (s. 69, p. 113).

(*u*) Inquiry by a superintending inspector is expressly required:—

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He may and he is hereby empowered to summon before him any persons whomsoever, and to examine them upon oath or otherwise touching any matter relating to the purposes of the inquiry;

And may require production of local surveys, rate-books, &c.

And he may by any such summons require any parochial officer, or any officer of or acting under any corporation, guardians, or directors of the poor, and any commissioner, trustee, officer, or person acting under any local Act of parliament in force within the district or place to which any such inquiry may relate, to produce before him any surveys, plans, sections, rate-books, or other like documents which may by reason of their office be in their custody or control touching any matter relating to the purposes of such inquiry; and such inspector may examine, inspect, or take copies of any such books, surveys, plans, sections, and documents, or any of them, or part thereof;

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1. In case of preliminary inquiries with a view to the application of the Act (s. 8, p. 19).
2. With respect to the terms upon which water companies ought to supply water for the purposes of the Act (s. 75, p. 120).
3. With respect to the state of burial grounds (s. 82, pp. 128, 129).
4. With respect to the propriety of extending districts or of amending orders in council, and provisional orders made under the Act (s. 141, p. 194);

And by s. 6, superintending inspectors may be required by the general board of health to make inquiries for the purpose of assisting them in the superintendence and execution of the Act, when, where, and in such manner as the board shall direct. See note to section 4, *ante*, p. 13.

And whosoever wilfully disobeys any such summons, or prevents any such inspector from examining, inspecting, or taking copies as last aforesaid, or refuses to answer any question put to him by such inspector for the purposes of the said inquiry, shall be liable to a penalty not exceeding five pounds:

Penalties for disobeying summons, &c.

Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him (*u*); and no person shall be required in any case, in obedience to any such summons, to travel more than ten miles from his place of abode.

Witnesses entitled to expenses.

CXXII. And be it enacted, that the accounts of the receipts and expenditure of the local board of health shall be audited and examined once in every year at the least, at such time or times as shall be appointed by such local board,—

Accounts of local board to be audited annually.

In case of a corporate district, by the auditors of the corporate borough, whereof the whole or part is within such district;

By whom.

In corporate districts;

And in case of a district exclusively consisting of the whole or part of two or more corporate boroughs, or of one or more of such boroughs, and also of part of any such borough or boroughs, by such two of the auditors for the

In districts consisting of parts of corporate boroughs, &c.;

(*u*) These charges will be amongst the expenses incurred by the superintending inspector in relation of his inquiry. See s. 11, p. 32.

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time being of the corporate boroughs respectively, whereof the whole or part is within such district, as shall from time to time be appointed by the local board of health;

In other districts;

And in case of any other district as soon as can be after the twenty-fifth day of March in every year, by the auditor of accounts relating to the relief of the poor for the district for the audit of such accounts, or for the parish or union in which such district under this Act is comprised;—

Or if any district under this Act be partly situate in two or more parishes, unions, or districts for the audit of accounts, by such one of the auditors for the time being of the parishes, unions, or districts for the audit of accounts (whereof the whole or part is within such district under this Act) as shall from time to time be appointed by the local board of health (*v*);

Auditor may require production of books, &c.

And for the purposes of any audit and examination of accounts under this Act, every such auditors or auditor may, by summons in writing, require the

(*v*) The borough auditors are elected annually by the burgesses on the 1st March, under s. 37 of the Municipal Corporation Act (5 & 6 W. 4, c. 76). The poor law auditor is elected under the Act 7 & 8 Vict. c. 101, s. 32, by the chairman and vice-chairman of the board of guardians, or (in case there be no chairman or vice-chairman) by two of the guardians, or (if there be no guardians) by two overseers. By the Act 11 & 12 Vict. c. 91, the poor law commissioners may authorize a person named by the auditor to act as his deputy, "with the same authorities, and subject to the same duties and liabilities as the auditor himself is entitled or subject to."

production before him (*w*) of all books, deeds, contracts, accounts, vouchers, and all other documents and papers which they or he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before them or him at any such audit and examination, or adjournment thereof, and to make and sign a declaration with respect to the same; and if any such person neglect or refuse so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he shall be liable for every neglect or refusal to a penalty of forty shillings; and if he falsely or corruptly make or sign any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury:

11 & 12 Vict. c. 63.

Penalty for disobedience to summons.

False declaration before auditor, perjury.

And all accounts certified by the auditors or auditor acting under this Act shall be final and conclusive, to all intents and purposes:

Auditors' certificate.

And such auditors or auditor shall in respect of each audit be paid by the local board of health, out

Remuneration.

(*w*) The words "or them" should have been inserted in this place. The Lords proposed to amend the whole section, by constituting *one* poor law auditor to be the auditor for the purposes of this Act in all districts, and this part of the section (framed with a view to the appointment of one auditor), was altogether introduced by their lordships. The Commons, however, insisted upon appointing an auditor or auditors, as prescribed by the clause as it now stands.

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of the general district rates levied under this Act(*x*), such reasonable remuneration as they shall from time to time, by order in writing, determine and appoint(*y*):

Notice of audit.

Provided always, that before each audit and examination of accounts under this Act—

The clerk shall give ten days notice of the time and place at which the same will be made, by advertisement in some one or more of the public newspapers usually circulated within the district for which the audit and examination will be made;

Accounts to be open to inspection, &c. before audit.

And a copy of the accounts to be audited and examined shall be deposited in the office of the local board of health, and be open during office hours thereat, to the inspection of all persons interested, for seven days before the audit and examination; and all such persons shall be at liberty to take copies of or extracts from the same without fee or reward:

Auditor to report, and report to be published.

And within fourteen days after the audit and examination shall have been completed,—

The auditors or auditor shall report upon the accounts audited and examined, and shall deliver such report to the clerk, who shall cause

(*x*) *See* s. 87, p. 136.

(*y*) The amount of remuneration should in all cases be fixed before the auditor is appointed. An express enactment to that effect is contained in the City of London Sewers Act, 1846, s. 46. By the Metropolitan Sewers Act, (11 & 12 Vict. c. 112, s. 121), the remuneration to each auditor is fixed at two guineas for every day during which he is fully employed on the audit.

the same to be deposited in the office of the local board of health, and to be published in some one or more of the public newspapers usually circulated in the district to which it relates. 11 & 12 Vict. c. 63.

Arbitration.

CXXIII. And be it enacted (*y*), that— Mode of referring to arbitration.

In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for) (*z*),—

And in case of any matter which by this Act is authorized or directed to be settled by arbitration (*a*),—

Then, unless both parties concur in the appointment of a single arbitrator, each party, on the

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(*y*) This section is adapted from s. 25 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

(*z*) Section 144, p. 196, directs that all disputes as to amount of compensation for damages occasioned by the exercise of the powers of the Act shall be settled by arbitration or (if the amount claimed be under 20*l.*) by two justices.

(*a*) The matters specially directed to be settled by arbitration are as follows:—

1. Disputes as to the proportion in which owners shall contribute to the expenses of putting in order private streets, s. 69, p. 113.
2. Terms upon which water ought to be supplied by water companies for the purposes of the Act, s. 75, p. 120.
3. Disputes as to whether water companies can furnish a proper and sufficient supply of water, s. 69, p. 113.
4. Disputes between Oxford or Cambridge universities and the local board with respect to the proportion and manner in which university shall contribute towards expenses under the Act, s. 105, p. 155.

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request of the other, shall appoint an arbitrator, to whom the matter shall be referred:

Appointment of arbitrators.

And every such appointment when made on the behalf of the local board of health shall (in the case of a non-corporate district) be under their seal and the hands of any five or more of their number, or under the common seal in case of a corporate district, and on the behalf of any other party under his hand, or if such party be a corporation aggregate under the common seal thereof; and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same:

Submission not revocable without consent.

And after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation:

Arbitrator appointed by one party shall act for both in certain cases.

And if for the space of fourteen days after any such matter shall have arisen, and notice in writing by one party (who has himself duly appointed an arbitrator) to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fail to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties;

Award to be final.

And the award of any arbitrator or arbitrators appointed in pursuance of this Act shall be binding, final, and conclusive upon all persons, and to all intents and purposes whatsoever.

CXXIV. And be it enacted (*b*), that if before the determination of any matter so referred any arbitrator die, or refuse or become incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if he fail so to do for the space of seven days after notice in writing from the other party in that behalf the remaining arbitrator may proceed *ex parte;* and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made:

11 & 12 Vict. c. 63.

Death, &c. of one of several arbitrators;

And in case a single arbitrator die, or become incapable to act, before the making of his award, or fail to make his award within twenty-one days after his appointment, or within such extended time, if any, as shall have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made.

of single arbitrator.

CXXV. And be it enacted, That in case there be more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire die, or become incapable to act, the arbitrators shall forthwith appoint another person in his stead;

In case of several arbitrators, an umpire to be appointed by them;

And in case the arbitrators neglect or refuse

or (in case of their

(*b*) This section is adapted from the Lands Clauses Consolidation Act, 1845, ss. 29, 30.

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default) by quarter sessions.

to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the court of general or quarter sessions shall, on the application of any such party, appoint an umpire;

Umpire's award to be final.

And the award of the umpire shall be binding, final, and conclusive upon all persons and to all intents and purposes whatsoever;

Umpire to award in case arbitrators fail to do so within a certain time.

And in case the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time, if any, as shall have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire; and the provisions of this Act with respect to the time for making an award, and with respect to extending to (*c*) the same in the case of a single arbitrator, shall apply to an umpirage (*d*).

Time within which award must be made.

CXXVI. Provided always, and be it enacted, that the time for making an award under this Act shall not be extended beyond the period of three months from the date of the submission or from the day on which the umpire shall have been appointed (as the case may be) (*e*).

(*c*) This word "to" was printed by mistake in the copy of the Bill from which the ingrossment was made.

(*d*) The section is adapted from sections 27, 28, and 31 of the Lands Clauses Consolidation Act. The court of general or quarter sessions is substituted for the board of trade, by whom, according to s. 28 of the Lands Clauses Act, an umpire is to be appointed in case of the arbitrators' default.

(*e*) The period of three months is also fixed by the Lands Clauses Consolidation Act, s. 23 (3).

11 & 12 Vict. c. 63.

Arbitrator may require production of documents.

CXXVII. And be it enacted (*f*), that any arbitrator, arbitrators, or umpire, appointed by virtue of this Act, may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath;

Costs of reference to be in his discretion.

And the costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or of the umpire (in case the matters referred are determined by an umpire under the power hereinbefore contained in that behalf);

Submission may be made a rule of court.

And any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto.

Declaration to be made by arbitrator and umpire.

CXXVIII. And be it enacted (*g*), that before any arbitrator or umpire shall enter upon any such reference as aforesaid he shall make and subscribe the following declaration before a justice of the peace; (that is to say),—

"I *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1848. *A. B.*"

(*f*) Adapted from ss. 32, 34, and 36 of the Lands Clauses Consolidation Act, 1845.

(*g*) Lands Clauses Consolidation Act (s. 33).

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And such declaration shall be annexed to the award when made; and if any arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor.

Legal Proceedings.

Summary proceedings before justices for damages or expenses.

CXXIX. And be it enacted, that in all cases in which the amount of any damages, costs, or expenses is by this Act directed to be ascertained or recovered in a summary manner, the same may be ascertained by and recovered before two justices, together with such costs of the proceedings as the justices may think proper (*h*); and if the sums adjudged be not paid by the party against whom the adjudication is made, the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication (*i*);

For penalties.

And any penalty imposed by or under the autho-

(*h*) *See* also the 11 & 12 Vict. c. 43, s. 18, that the costs allowed must in all cases be specified in the order of conviction and be recovered in the same manner and under the same warrants as the sum or penalty adjudged to be paid; and in case the information or complaint be dismissed, costs may be awarded to the defendant, and be recovered by distress and sale, or, in default of distress, by imprisonment. With respect to the general mode of proceeding, see s. 131, *post*, pp. 182, 183.

(*i*) The Act 11 & 12 Vict. c. 43, s. 20, provides that in cases wherein justices of the peace are authorized to issue warrants of distress to levy sums recovered before them, they may commit the defendant to prison for any term not exceeding three calendar months, unless the sums mentioned in the warrants, together with the costs of the distress, commitment, and conveyance to prison be sooner paid. *See* note (*l*), *infra*, p. 181.

rity of this Act, or any bye-law made under this Act, the recovery whereof is not otherwise expressly provided for, may, upon proof on oath of the offence in respect of which the penalty is alleged to have been incurred, be recovered before two justices, together with such costs of the proceedings as they may think proper (*k*); and if the sums adjudged be not paid by the party against whom the adjudication is made the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication; 11 & 12 Vict. c. 63.

In case of conviction for penalties offender may be detained or suffered to go at large upon recognizance.

And (*l*) such justices or either of them may order that any offender convicted as last aforesaid be detained and kept in safe custody until return can be conveniently made to the last-mentioned warrant, unless he give sufficient security, by way of recognizance or otherwise, for his appearance on the day appointed by the return, such day not being more than eight days from the time of taking the security; and if before issuing such warrant, or upon the return thereof, it appear to the satisfaction of the last-mentioned justices that no sufficient distress can be had within their jurisdiction, they

(*k*) *See* note (*h*), *supra*, p. 20.

(*l*) This clause applies only to proceedings upon convictions for penalties, but the Act 11 & 12 Vict. c. 43, s. 18, contains a somewhat similar provision applicable to orders for payment of money as well as to convictions for penalties, and as the clause in the text is directory only, it may be advisable in all cases to proceed under the Act referred to.

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may, by warrant under their hands and seals, cause the offender to be committed to gaol, there to remain, without bail, for any term not exceeding three months, unless such penalty and costs be sooner paid (*m*).

Form of conviction.

CXXX. And be it enacted, that the justices before whom any person is convicted of any offence against the provisions of this Act may cause the conviction to be drawn up according to the form and directions contained in the schedule (E.) annexed to this Act (*n*), or to the like effect; and any conviction so drawn up shall be valid and effectual to all intents and purposes (*nn*).

Mode of proceeding before justices.

CXXXI. And be it enacted, that in proceeding before any justice or justices under the provisions of this Act, in any case in which the mode of proceeding is not specially prescribed (*o*), any one

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(*m*) A form of return and warrant, and the course of the proceeding in this case is provided by the Act 11 & 12 Vict. c. 43, s. 21.

(*n*) *Post*, p. 207.

(*nn*) The Act 11 & 12 Vict. c. 43, s. 17, is not applicable where statutes passed subsequently thereto (as in the case of the statute in the text) prescribe a particular form of conviction. The statute in the text, however, provides no particular form of order for the payment of money or otherwise, and in such case it is provided by the Act referred to (11 & 12 Vict. c. 43, s. 17), that the orders may be drawn up according to such one of the forms marked (K. 1—3) contained in the schedule to that Act as may be applicable to the case.

(*o*) The course of proceeding here prescribed will not apply to proceedings under s. 39, (pp. 69–72), or s. 103, (pp. 152, 153).

justice may summon (*p*) the party charged to appear before the justice or justices by whom the matter is to be determined at a time and place to be named; 11 & 12 Vict. c. 63. Summons.

And upon the appearance of the party charged or in his absence upon proof of service of the summons upon him personally, or by leaving a copy thereof at his last known place of abode or business, the last-mentioned justice or justices may hear and determine the matter, and for that purpose examine the parties or any of them, and their witnesses, on oath (*q*); Hearing. Examination of parties, &c.

(*p*) The form of summons and the officers by whom the summons is to be served are regulated by the Act 11 & 12 Vict. c. 43, and it may be observed generally, that the course of proceeding prescribed by that Act must be construed as supplemental to the provisions of this Act, except in so far as it may be inconsistent therewith. In case of inconsistency between the two Acts, the statute in the text (being the more recent) will govern proceedings taken under its provisions.

By section 2 of the same Act (11 & 12 Vict. c. 43) it is provided that no objection shall be taken or allowed to any information, complaint or summons for any defect in form or substance, or for any variance between the information, complaint, or summons and the evidence adduced at the hearing by the informant or complainant; but that if any such variance appear to the presiding justices to be such as to mislead the defendant, they may adjourn the hearing to a future day.

(*q*) The Act 11 & 12 Vict. c. 112, c. 43, s. 7, empowers justices to compel witnesses to attend and give evidence whenever the witness resides or is within the jurisdiction of the justices by whom the summons for attendance is issued, and where the examination to be taken within the jurisdiction of the same justices. In other cases the attendance of wit-

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And the costs of all such proceedings shall be in the discretion of the last-mentioned justice or justices (*q*);

Overplus of distress to be paid to the defendant.

And where in this Act any sum of money whatsoever is directed to be levied by distress and sale of the goods and chattels of any party, the overplus arising from such sale shall, after satisfying such sum, and the costs and expenses of the distress and sale, be returned to him, on demand;

Distress not unlawful for want of form in warrant, &c.

And no distress levied under the authority of this Act shall be unlawful, nor shall any party making the same be a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall he be a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction in an action upon the case.

Justices, though members of local board, may act under this Act.

CXXXII. And be it enacted, that justices of the peace, being also members of any local board of health, may, if acting in petty sessions, notwithstanding their being such members, exercise the jurisdiction vested in them as such justices under this Act.

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nesses can only be enforced by subpœna issuing out of chancery. Jervis's Acts by Archbold, p. 110, note.

See also s. 15 of the same Act; but that enactment gives no power to examine defendants. The term "oath" includes an "affirmation," see s. 2, *ante*, p. 8.

(*q*) See s. 129, *ante*, p. 180.

11 & 12 Vict. c. 63.

Common informers not to sue without consent of attorney general.

CXXXIII. And be it enacted, that no proceedings for the recovery of any penalty incurred under the provisions of this Act shall be had or taken by any person other than by a party grieved, or the local board of health in whose district the offence is committed, or by the churchwardens and overseers of the poor (where any such penalty is directed to be paid to the churchwardens and overseers of the poor) (*r*), without the consent in writing of Her Majesty's attorney general first had and obtained;

Proceedings for penalties to be taken within six months.

And that no such penalty shall be recovered unless proceedings for the recovery thereof shall have been commenced within six calendar months after the commission or occurrence of the offence upon which the penalty attaches (*s*);

Application of penalties recovered by informers;

And if the application of the penalty be not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local board of health of the district in which the offence was committed:

(*r*) *See ante*, ss. 79, p. 123, note (*l*) to the former section.

(*s*) This clause applies only to proceedings for penalties, but by one of Jervis's Acts (11 & 12 Vict. c. 43, s. 11), it is provided, "that in all cases where in the Act of parliament relating to the particular case no time is specially limited for making complaints upon which a justice or justices of the peace may be authorized to make an order, or laying informations for any act or offence punishable upon summary conviction, such complaint and information shall be made or laid within six calendar months from the time when the matter of the complaint or information arose." Previously to that Act there was no general law of limitation as to complaints. *See* Jervis's Acts by Archbold, p. 119, note.

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Application of penalties recovered by Local Board.

Provided always, that if the said local board be the informer they shall be entitled to the whole of the penalty recovered, and all penalties or sums recovered on account of any penalty by them shall be paid over to the treasurer, and shall by him be placed to the district fund account mentioned in this Act (*s*).

Liability to penalty not to relieve from other liabilities.

CXXXIV. And be it declared and enacted, that, notwithstanding the liability of any person to any penalty under the provisions of this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

Appeal to quarter sessions against rates and orders of justices.

CXXXV. And be it enacted, that any person who shall think himself aggrieved—

By any rate made under the provisions of this Act,—

Or by any order, conviction, judgment, or determination of, or by any matter or thing done by, any justice or justices, in any case in which the penalty imposed or the sum adjudged shall exceed the sum of twenty shillings,—

May appeal to the court of general or quarter sessions holden next after the making of the rate objected to, or accrual of the cause of complaint;

Notice of appeal.

But the appellant shall not be heard in support of the appeal, unless within fourteen days after the making and publication of the rate appealed against, or accrual of the cause of complaint, he give to the local board of health or justice

(*s*) *Ante*, s. 87, p. 135.

or justices by whose act he may think himself aggrieved notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal (*t*); 11 & 12 Vict. c. 63.

And the said court, upon hearing and finally determining the matter of the appeal, shall and may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents and purposes whatsoever: Judgment of the court.

Provided always, that if there be not time to give such notice and enter into such recognizance (*t*) Appeal to subsequent sessions.

(*t*) In the bill originally introduced and in the several copies ordered by the House of Commons to be printed down to and inclusive of that ordered to be printed on May 15, the following paragraph was inserted after the word "appeal" in l. 4 of this page:—

"Nor unless within ten days after such notice he enter into a recognizance, with two sufficient securities, before some justice, conditioned to try the appeal and abide such order and pay such costs as shall be made and awarded by the said court."

By some accident this paragraph was omitted in the copy from which the ingrossment was made, viz. the copy printed by order of the House on May 25. The only amendment made by the Commons in any part of this section consisted in the substitution of the word "fourteen" for "seven" in the early part of the section, and as no amendments were subsequently made in the same section, with the exception of one in the House of Lords, by which the words "in any case in which the penalty imposed or the sum adjudged shall exceed the sum of twenty shillings" were inserted quite at the commencement, the error escaped detection until after the measure had received the Royal Assent. The recognizance referred to in the proviso is the recognizance which would have been regulated by the passage omitted.

as aforesaid before the sessions holden as last aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard:

Grounds of appeal must be stated.

Provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid.

Power of sessions upon appeals against rates.

CXXXVI. And be it enacted, that the said court of general or quarter sessions shall upon appeals under this Act against any rate have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of general or quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, upon appeals with respect to rates for the relief of the poor; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded upon the last-mentioned appeals:

Although rate be quashed it may be levied and placed towards the next effective rate.

Provided always, that notwithstanding the quashing of any rate appealed against, all monies charged by such rate shall, if the court before whom the appeal is heard think fit so to order, be levied as if no appeal had been made, and such monies, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made.

11 & 12 Vict. c. 63.

No rate or proceeding to be quashed for want of form, &c.

CXXXVII. And be it enacted, that no rate, nor any proceeding to be had touching the conviction of any offender against this Act, nor any order, award, or other matter or thing whatsoever made, done, or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, or be removed or removable by certiorari, or other writ or process whatsoever, into any of the superior courts.

Proceedings in case of non-corporate districts.

CXXXVIII. And be it enacted, that the local board of health of any non-corporate district (*t*)—

Local board of non-corporate districts may sue and be sued in the name of the clerk.

May sue and be sued in the name of the clerk for the time being for or concerning any contract, matter, or thing whatsoever relating to any property, works, or things vested or to become vested in them by reason of the provisions of this Act, or relating to any matter or thing whatsoever entered into or done, or intended to be entered into or done by them, under the provisions of this Act;

Demise in ejectment may be in his name.

And in any action of ejectment brought or prosecuted by such local board it shall be sufficient to lay the demise in the name of the said clerk;

Property of local board may be described as property of clerk.

And in proceedings by or on the part of such local board against any person for stealing or

(*t*) In the case of corporate districts the local board of health will consist of the body corporate of the boroughs of which the districts respectively consist, and they will, of course, sue and be sued in their corporate name.

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wilfully injuring or otherwise improperly dealing with any property, works, or things belonging to them or under their management, it shall be sufficient to state generally that the property or thing in respect of which the proceeding is instituted is the property of the said clerk;

All legal proceedings may be taken in clerk's name.

And (*u*) all legal proceedings by, on the part of, or against such local board, under this Act, may be preferred, instituted, and carried on in his name;

Proceedings not to abate by death, &c. of clerk.

And no proceedings whatever shall abate or be discontinued by the death, resignation, or removal of the clerk, or by reason of any change or vacancy in such local board by death, resignation, or otherwise:

Clerk to be reimbursed.

Provided always, that the clerk in whose name any such action or suit, complaint, information, or proceeding, may be brought, preferred, instituted, or defended as aforesaid, shall be fully reimbursed out of the general district rates to be levied under this Act (*v*) all such costs, charges, damages, and expenses as he shall or may be or become liable to pay, sustain, or be put unto by reason of his name being so used.

Notice of action against officers, &c.

CXXXIX. And be it enacted (*w*), that no writ

(*u*) This clause was introduced in order to obviate the possibility of doubt as to whether the section was intended to apply to proceedings before magistrates.

(*v*) *Ante*, s. 87, p. 135.

(*w*) The several provisions in this section are adapted from the Smuggling Act (8 & 9 Vict. c. 87, ss. 17—121). With respect to proceedings against justices, see the recent Act for

or process shall be sued out against or served upon — 11 & 12 Vict. c. 63.

Any superintending inspector, or any officer or person acting in his aid, or under the direction of the general board of health,—

Nor against the local board of health, or any member thereof, or the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said local board,—

For any thing done or intended to be done under the provisions of this Act, until the expiration of one month next after notice in writing shall have been delivered to him, or left at their or his office or usual place of abode, clearly and explicitly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice; and unless such notice be proved, the jury shall find for the defendant; For things done or intended to be done under the Act. Must be proved at trial.

And every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards; Limitation of action.

And shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; Venue.

protecting justices of the peace from vexatious actions (11 & 12 Vict. c. 44).

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General issue.

And the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder;

Tender of amends, &c.

And any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney, or agent, at any time within one month after service of such notice, and in case the same be not accepted, may plead such tender in bar, and (by leave of the court) with the general issue or other plea or pleas;

Costs.

And if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinue, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly;

Money may be paid into court.

And in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, the defendant may, by leave of the court, at any time before trial, pay into court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue or other plea or pleas, any rule of court or practice to the contrary notwithstanding (*x*).

Persons acting in execution

CXL. And be it enacted, that no matter or thing done or contract entered into by the local board of

(*x*) Framed with a view to the case of O'Brien *v.* Clement, 15 M. & W. 435.

health, nor any matter or thing done by any superintending inspector, or any member of the said local board, or by the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said local board, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by any such local board, member, officer of health, clerk, surveyor, inspector of nuisances, or other officer or person acting as last aforesaid, shall be borne and repaid out of the general district rates levied under the authority of this Act.

11 & 12 Vict. c. 63.
Of Act not to be personally liable.

CXLI. And be it enacted, that Her Majesty may from time to time alter or amend any order in council made under or in pursuance of the provisions of this Act, by any subsequent order in council, in such manner as Her Majesty, by and with the advice of her privy council, may think proper:

Miscellaneous.
Orders in council—

And if at any time it appear to the general board of health that any provisional order made by them under this Act should be altered or amended, or that the boundaries of any district should be altered or extended, they shall make a provisional order under their hands and seal of office accordingly (*x*):

and provisional orders may be amended, and districts extended.

(*x*) See s. 10, p. 26.

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Proceedings before amendment.

Provided always, that no order in council or provisional order as last aforesaid shall be made until such proceedings have been taken in and with respect to the district and parts to be affected thereby as are hereinbefore required to be taken previously to the original constitution of a district under this Act;

Provisional orders of no force till confirmed by parliament.

And no such provisional order shall be of any force or effect without the previous authority of parliament, as hereinbefore prescribed with respect to provisional orders made under this Act. (*y*).

Orders in council,—

CXLII. And be it enacted, that all orders in council under this Act—

from what time to be in force;

Shall take effect and be in full force and operation within the district to which they apply from and after a day which shall be specified in such orders for that purpose;

to be published,

And a copy of every such order shall be published in the London Gazette;

and laid before parliament.

And shall be laid before parliament in the month of January in every year, if parliament be then sitting, or if parliament be not then sitting, then within one week after the next meeting thereof;

Reports of superintending inspectors, &c. to be laid before parliament.

And whenever any provisional order of the general board of health is submitted to parliament for confirmation,—

The said general board shall present to both houses of parliament a copy of all reports of

(*y*) *Ante*, s. 10, p. 29.

any superintending inspector with respect to the parts to which the provisional order relates, and of all memorials forwarded to the said general board with respect to such reports. 11 & 12 Vict. c. 63.

CXLIII. And be it enacted, that in case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of— Entry upon lands for the purposes of this Act,—

Making plans,—

Surveying, measuring, taking levels,—

Examining works,—

Ascertaining the course of sewers or drains,—

Or ascertaining or fixing boundaries,—

And the owner or occupier of such lands or premises shall refuse to permit the same to be entered upon, examined, or laid open for the purposes aforesaid, or any of them, the local board of health may, upon notice to such owner or occupier, apply to two justices for an order authorizing the members of such local board, and the superintending inspector, surveyor, and inspector of nuisances, or any of them, to enter, examine, and lay open the said lands and premises for the purposes aforesaid, or any of them; upon an order of two justices.

And if no sufficient cause shall be shown against the same, the said justices may make an order authorizing the same accordingly;

And thereupon any superintending inspector, the local board of health, or any member thereof, the surveyor, and inspector of nuisances, and any person authorized by any such superintending inspector, Time of entry, &c.

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local board, surveyor, or inspector of nuisances, may at at all reasonable times, between the hours of ten in the forenoon and four in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as shall be specified in the said order, without being subject to any action or molestation for so doing:

No entry to be made until after twenty-four hours' notice, except in case of emergency.

Provided always, that except in case of emergency, no entry shall be made or works commenced under the powers of this enactment, unless twenty-four hours at the least previously thereto notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

Compensation in case of damage by local board, &c.

CXLIV. And be it enacted, that full compensation shall be made out of the general or special district rates to be levied under this Act (*z*), to all persons sustaining any damage by reason of the exercise of any of the powers of this Act; and in case of dispute as to amount the same shall be settled by arbitration in the manner provided by this Act (*a*); or (if the compensation claimed do not exceed the sum of twenty pounds) the same may be ascertained by and recovered before justices in a summary manner.

Sewers, &c. of commissioners of sewers:—

CXLV. And be it declared and enacted, that nothing in this Act shall be construed to authorize

(*z*) *See* ss, 86, 87, *ante*, pp. 134, 136.
(*a*) *See* ss. 123—127, *ante*, pp. 175-179.

the local board of health to use, injure, or interfere with— 11 & 12 Vict. c. 63.

Any sluices, flood-gates, sewers, groynes, sea defences, or other works already or hereafter made under the authority of any commissioners of sewers appointed by the Crown,—

Or any sewers or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or private Act of parliament, or for the purpose of irrigating lands,— or for land drainage,—

Or to use, injure, or interfere with any watercourse, stream, river, dock, basin, wharf, quay, or towing path in which the owner or occupier of any lands, mills, mines, or machinery, or the proprietors or undertakers of any canal or navigation, shall or may be interested,— and private watercourses,—

Without consent in writing first had and obtained; not to be interfered with without consent.

And that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under any local or private Act of parliament for the drainage, preservation, or improvement of land, or for or in respect of any mills, mines, machinery, canal, or navigation, as last aforesaid. Reservation of powers under Land Drainage Act.

CXLVI. And be it enacted, that in any case in which the local board of health may have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable by this Act, the said local Local board may allow owners time for repayment of expenses.

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board may, if they think fit, allow such owner time for repayment, and receive the same by such annual instalments, not being less than one thirtieth part of the entire sum, together with interest at the rate of five pounds in the hundred upon the sum from time to time remaining unpaid, as they, under the circumstances of each case, may consider to be just; but although time for repayment be allowed as last aforesaid, the sum due, or so much thereof as may be unpaid, shall from time to time, in case of default in payment at the times respectively appointed for payment, be recoverable in like manner in all respects as the entire sum might have been recovered if time for repayment had not been allowed (*b*).

Entire sum remaining due may be recovered in case of any default.

False evidence punishable as perjury.

CXLVII. And be it enacted, that every person who upon any examination on oath under the provisions of this Act shall wilfully and corruptly give false evidence shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury.

Penalty— for obstructing officers, defacing boards, &c.;

CXLVIII. And be it enacted, that whosoever—

Wilfully obstructs any superintending inspector, or any member of the local board of health, or any officer or person duly employed in the execution of this Act,—

(*b*) *See ante*, p. 82, note (*f*).

Or destroys, pulls down, injures, or defaces any board upon which any bye law, notice, or other matter is inscribed, shall (if the same were put up by authority of the local or general board of health)— 11 & 12 Vict. c. 63.

Be liable for every such offence to a penalty not exceeding five pounds;

And—

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act,— Upon occupiers preventing execution of works.

Any justice to whom application is made in this behalf shall, by order in writing (which may be according to the form contained in the schedule (F.) to this Act annexed (*c*), or to the like effect), require such occupier to permit the execution of the works required to be executed, provided that the same appear to such justice to be such as are necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal;

And—

If the occupier of any premises, when requested by or on behalf of the local board of health to state the name of the owner of the premises Occupiers to disclose owner's name.

(*c*) See *post*, p. 207.

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occupied by him, shall refuse or wilfully omit to disclose or wilfully mis-state the same,—

Any justice may, on oath made before him of such request and refusal, omission, or mis-statement, summon the party to appear before him or some other justice at a time and place to be appointed in such summons, and if after being so summoned he neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding five pounds.

Consents of general and—

CXLIX. And be it enacted, that whenever the consent, sanction, or approval or authority of the general board of health is required by the provisions of this Act, the same shall be in writing under their seal and the hands of two or more members thereof;

local board to be in writing.

And whenever the consent, sanction, approval, or authority of the local board of health is so required the same shall (in the case of a noncorporate district) be in writing under their seal and the hands of five or more of them, or (in case of a corporate district) under their common seal.

Service of notices, &c. notices, upon local board.

CL. And be it enacted, that any summons, notice, writ, or proceeding of any kind whatsoever to be served upon the local board of health—

May be so served by being left at or sent through any post office, directed to the local board of health at their office, or by being delivered there to the clerk personally; 11 & 12 Vict. c 63.

And in all cases in which any notice is by this Act required to be given to the owner or occupier of any premises,— Description of owners and occupiers in notices.

It shall be sufficient to address the notice to them by the description of the "owner" or "occupier" (as the case may require) of the premises (naming them) in respect of which the notice is given, without further name or description;

And the notice shall be served upon them or one of them, as the case may require, either personally or by delivering the same to some inmate of his or their place of abode, or in the case of the occupier (and also in case of the owner, if his place of abode be unknown,) upon any inmate of the last-mentioned premises; or (if such premises be unoccupied) then, in case the notice is required to be served upon the occupier, (and in case of the owner also, if his residence be unknown,) it shall be sufficient to fix the notice upon some conspicuous part of the premises: Service upon owners and occupiers.

Provided always, in the case of notices to the owner, that, although his place of abode be known to the local board of health, yet, if it be not within the limits of their district, it shall Transmission by post to owners out of district.

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be sufficient for them to transmit any notice, directed to him by name, through the post.

Exemptions from stamp duty,—

CLI. And be it enacted, that—

on advertisements;

No advertisement inserted or caused to be inserted by the general or local board of health in the London Gazette or any paper or publication under this Act, or for the purpose of carrying the same into effect,—

on documents executed by general or local board, &c.;

Nor any deed, award, submission, instrument, contract, agreement, or writing made or executed by the said general or local board, their officers or servants, under or for the purposes of this Act,—

on appointments.

Nor any appointment by the general or local board of any officer or person under this Act,—

Shall be chargeable with any stamp duty whatever:

Exemption from window duty in certain cases.

And (*b*) in case any vault, cellar, or underground room—

Of any house containing, at the time of the passing of this Act, seven windows or lights only,—

Shall have been let or occupied separately as a dwelling before the passing of this Act, without any external window, or such an external window as is required by the provisions of this Act (*b*) with respect

(*b*) This exemption is with reference to the provisions of s. 68. See the Acts 48 Geo. 3, c. 55 (Schedule A.), and 6 Geo. 4, c. 7, s. 1.

to the letting and occupation of vaults, cellars, and underground rooms, and it shall become necessary, by reason of such provisions, to make such an external window as is required thereby, in order that such vault, cellar, or underground room may lawfully be let or occupied separately as a dwelling, the making only of such external window shall not render any person liable in respect of such house to the duties payable for a house having eight windows or lights, any thing in any Act of parliament to the contrary notwithstanding. 11 & 12 Vict. c. 63.

CLII. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present session of parliament. Amendment of Act, &c.

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Schedule (A.)

SCHEDULES

TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A.)

Form of Voting Paper.

District of

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Rate-payer.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy vote he must in like manner write his initials, sign his own name, and state in writing the name of the corporation or company for whom he is proxy.

Initials of the voter against the names of the persons for whom he intends to vote.	Names of the persons nominated.	Residence of the persons nominated.	Quality or calling of the persons nominated.	Names of the Nominators.	Address of the Nominators.

I vote for the persons in the above list against whose names my initials are placed.

Signed ———
or the mark of ———
——— witness to the mark.
or ——— proxy for ———

SCHEDULE (B.)

Form of Mortgage of Rates.

By virtue of the Public Health Act, 1848, the local board of health for the district of ——— in consideration of the sum of ——— paid to the treasurer of the said district by A. B., of ——— for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*], as the said sum of ——— doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, to hold to the said A. B., his executors, administrators, and assigns, from the day of the date (*a*) hereof until the said sum of ——— with interest at the rate of ——— per centum per annum for the same, shall be fully paid and satisfied: and it is hereby declared, that the said principal sum shall be repaid on the ——— day of ——— at [*place of payment*]. Dated this ——— day of ——— one thousand eight hundred and ———

[*In case of a noncorporate district, to be signed by five members at least of the local board of health, and sealed with their seal; in case of a corporate district, to be sealed with the common seal.*]

SCHEDULE (C.)

Form of Transfer of Mortgage.

I, A. B. of ——— in consideration of the sum of ——— paid to me by C. D. of ———, do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage, bearing date the ——— day of ——— and made by the local board of health for the district of ——— for securing the sum of ——— and interest thereon at ———

(*a*) In some of the copies printed by the Queen's printer, the word "day" is, by mistake, inserted instead of the word "date."

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per centum per annum, [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right, estate and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal, this ——— day of ——— one thousand eight hundred and ———

A. B. (L. S.)

SCHEDULE (D.)

Form of Distress Warrant.

To A. B., Collector of Rates,
and to all Constables and Peace Officers.

County of ———
[or Borough, &c.]
to wit.

WHEREAS complaint hath been duly made by A. B., one of the collectors for the district of ——— under and by virtue of the Public Health Act, 1848, that C. D. of, &c. hath not paid and hath refused to pay the sum of ——— duly assessed upon him in and by a certain rate bearing date on or about the ——— day of ——— in the year of our Lord one thousand eight hundred and ——— although the same hath been duly demanded of him: And whereas it appears to me, E. F. esquire, one of Her Majesty's justices of the peace in and for the said county [*or* borough, &c.], as well upon the oath of the said A. B. as otherwise, that the said sum of ——— hath been duly demanded in writing by him from the said C. D., and that the said ——— hath refused to pay the same for the space of fourteen days after such demand made, and doth refuse to pay the same: And whereas the said C. D. hath been duly summoned to appear before me, to show cause why the said sum should not be paid by him, and not having shown to me any sufficient cause why the same should not be paid, these are therefore, in her Majesty's name, to command you to levy the said sum of ——— and also the sum of ——— the costs of proceeding to obtain this warrant, by distress and sale of the goods and chattels of the said C. D., and your reasonable charges of taking, keeping, and selling the said distress, rendering to him the overplus (if any), on demand; and if sufficient distress cannot be found of the goods and chattels of the

said C. D., that then you certify the same to me, together with this warrant, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, the ——— day of ——— in the year of our Lord ———

(Signed) E. F. (L. S.)

SCHEDULE (E.)

Form of Conviction.

County of ——— [or Borough, &c.] to wit. } Be it remembered, That on the ——— day of ——— in the year of our Lord ——— A. B. is convicted before me [*or* us] ——— one [or two] of Her Majesty's justices of the peace in and for the county [*or* borough, &c.] of ——— [*here describe the offence generally, and the time and place when and where committed, in the words of this Act, or as near thereunto as may be*], contrary to the Public Health Act, 1848; and I [*or* we] do adjudge that the said A. B. hath forfeited for his said offence the sum of [*amount of penalty adjudged*], and that he do pay to C. D. the further sum of ——— as and for his costs in this behalf.

Given under my hand and seal [*or* our hands and seals], the day and year first above written.

(Signed) ——— (L. S.)
——— (L. S.)

SCHEDULE (F.)

Form of Order to permit Execution of Works by Owners.

County of ——— [or Borough, &c.] to wit. } Whereas complaint hath been made to me, E. F. esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*] of ——— by A. B., owner, within the meaning of the Public Heath Act, 1848, of certain premises, to wit, a house [*as the case may be*] situate in ——— street [*as the case may be*] in the parish of ——— in the said county [*or* borough, *&c.*], that C. D., the occupier of the said premises, doth prevent the said A. B. from obeying and carry-

PUBLIC HEALTH ACT 1848.

Schedule (F.)

ing into effect the provisions of the said Act in this, to wit, that he the said C. D. doth prevent the said A. B. from [*here describe the works generally, according to circumstances, for instance, thus:* constructing and laying down, in connexion with the said house, a covered drain, so as to communicate with a (sewer *or* drain) of the local board of health of the district of ——— (*or* a sewer, *&c.* which the local board of health of the district of ——— are entitled to use, *as the case may require*), such sewer being within one hundred feet of the said house]: And whereas the said C. D., having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said A. B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C. D. do permit the said A. B. to execute the same in the manner required by the said Act.

Given under my hand and seal, this ——— day of ———, in the year of our Lord one thousand eight hundred and ——

E. F. (L. S.)

APPENDIX.

NUISANCES REMOVAL AND DISEASES PREVENTION ACT, 1848.

11 & 12 Vict. cap. 123.

An Act to renew and amend an Act of the tenth year of Her present Majesty, for the more speedy removal of certain Nuisances, and the prevention of contagious and epidemic Diseases.

[4th September, 1848.]

WHEREAS an Act passed in the tenth year of Her Majesty's reign, for the more speedy removal of certain nuisances, and to enable the privy council to make regulations for the prevention of contagious and epidemic diseases, will expire at the end of the present session of parliament; and it is necessary that other provision should be made in (*a*) lieu thereof: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority

9 & 10 Vict. c. 96.

(*a*) The word "in" was accidentally omitted in a very few of the first copies printed by the Queen's printer.

APPENDIX.

of the same, that (*a*) in ENGLAND and IRELAND,—

In England and Ireland certain public bodies, &c. upon receipt of—

Upon receipt (or as soon afterwards as can be)—

By the town council,—or by any trustees or commissioners for—the drainage, paving, lighting, or cleansing, or—managing or directing the police,—of any city, town, borough, or place,—or by any other body of a like nature,—or by any commissioners of sewers—or guardians of the poor,—or (in Ireland) by the officers of health of any parish,—

notice in writing from two householders,

Of a notice in writing in the form contained in the schedule (A.) to this Act annexed, or to the like effect, signed by two or more inhabitant householders of the parish or place to which the notice relates, stating that,—

(To the best of the knowledge and belief of the persons by whom such notice is signed,)

of the filthy condition of any building;

Any dwelling house or building in any city, town, borough, parish, or place within or over which the jurisdiction or authority of the town council, trustees, commissioners, guardians, officers of health, or other body to whom such notice is given, extends, is in such a filthy and unwholesome condition as to be a nuisance to or injurious to the health of any person (*b*),—

(*a*) See the City of London Sewers Act, 1848, s. 77.

This and the following section require the reformation of imperfect house drains and ditches upon private premises; but they neither authorize or require the construction of, or the expenditure of money upon, sewers or main drains, or other works of a public nature. For these recourse must be made to the Public Health Act, *ante*, pp. 74—80, and 83—87; or (in the metropolitan district) to the powers vested in the metropolitan commissioners of sewers, or in the commissioners of sewers for the city of London.

(*b*) See Public Health Act, 1848, s. 60 *ante*, p. 99.

11 & 12 Vict. c. 123.

Or that upon any premises within such jurisdiction or authority there is any foul and offensive ditch, gutter, drain, privy, cesspool, or ashpit (*c*),— or of any foul and offensive drains, &c.—

Or any ditch, gutter, drain, privy, cesspool, or ashpit kept or constructed so as to be a nuisance to or injurious to the health of any person (*c*),— or of any drains, &c.

Or that upon any such premises swine (*d*), or any accumulation (*e*) of dung, manure, offal, filth, refuse, or other matter or thing, are or is kept so as to be a nuisance to or injurious to the health of any person,— or of any swine or accumulation of matter,—

Or that upon any such premises (being a building used wholly or in part as a dwelling house, or being premises underneath any such building), any cattle or animal are or is kept so as to be a nuisance to or injurious to the health of any person,— or of any animal in or under dwellings, &c.— kept so as to be a nuisance to any person, &c.—

Such town council, trustees, commissioners, guardians, officers of health, or other body,— by themselves, or by a committee

Or some committee thereof which may be temporarily or permanently appointed in this behalf by such town council, trustees, commissioners, guardians, officers of health, or other body, shall,— appointed by them,

After twenty-four hours notice in writing, by delivering the same to some person on the premises referred to in such first-mentioned notice, or (if there be no person upon the premises who can be so served) by fixing the same upon some conspicuous part of such premises, (or in case of emergency without notice),— after twenty-four hours' notice upon the premises,

By themselves, their servants or agents, with or cause examination to be made;

(*c*) *Id.* s. 54, and pp. 91, 92; s. 58, p. 96; s. 59, pp. 97, 98.

(*d*) *See* Public Health Act, 1848, s. 59, *ante*, p. 97.

(*e*) *Id.* s. 59, *ante*, p. 98.

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without medical or other assistants, enter such premises, and examine the same with respect to the matters alleged in such first-mentioned notice, and do all such works, matters, and things as may be necessary for that purpose;

and (if upon such examination, or a medical certificate, it appear that the matters stated in the notice are true),

And if upon such examination, or upon the certificate in writing of two legally qualified medical practitioners, it appear that any dwelling house or building so examined is in such a filthy and unwholesome condition as aforesaid, or that upon any premises so examined there is any such ditch, gutter, drain, privy, cesspool, ashpit, swine, cattle, or animal, or any such accumulation or other matter or thing as aforesaid, such town council, trustees, commissioners, guardians, officers of health, or other body, or such committee, shall make or cause to be made complaint before a justice, who shall thereupon issue a summons (which may be according to the form contained in the schedule (B.) to this Act annexed, or to the like effect,) requiring the owner or occupier of the premises examined to appear before two justices to answer such complaint;

to make complaint before a justice, who shall summon the owner or occupier to appear before two justices;

summons to be served on the premises;

And such summons shall be served by delivering the same, or a true copy thereof, to some person upon the premises in respect whereof complaint is made, or (if there be no person upon the premises who can be so served) by fixing such summons or copy upon some conspicuous part of such premises;

and such justices shall, upon proof, &c.

And if at the time and place appointed by such summons it be proved to the satisfaction of such justices that any dwelling house or building in respect whereof complaint is made is in such a filthy and unwholesome condition as aforesaid, or that any such

cause or causes of complaint as aforesaid exists or exist, and (in case such owner or occupier do not appear) that such summons or copy was served as aforesaid, such justices shall make an order in writing under their hands and seals, (which order may be according to the form contained in the schedule (C.) to this Act annexed, or to the like effect), for cleansing, whitewashing, or purifying such dwelling-house or building, or for the removal or abatement of any such cause or causes of complaint, in such manner and within such time as shall be specified in such order (not being more than two clear days, exclusive of Sunday, after service of such order as hereinafter directed);

order either of them to whitewash, &c., or remove the matter, &c. complained of;

And such order shall be forthwith served by delivering the same or a true copy thereof to some person upon the premises in respect whereof it is made, or (in case there be no person upon the premises who can be so served) by fixing such order or copy upon some conspicuous part of such premises;

Order to be served on the premises;

And if such order be not complied with, the owner or occupier against whom it is made shall be liable to a penalty not exceeding ten shillings for every day during the continuance of his default (*e*), and the town council, trustees, commissioners, guardians, officers of health, or other body mentioned therein, shall, by themselves, their servants or agents, or by such committee as aforesaid, their servants or agents, enter such last-mentioned premises, and cleanse, whitewash, or purify the same, or remove or abate the cause or causes of complaint in respect whereof

and if such order be not complied with, the owner or occupier in default to be liable to penalties, and or committee, public body to enter the premises, and execute the order.

(*e*) As to the recovery and application of penalties see s. 17, *post*, p. 234.

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the said order shall have been made, and do all such works, matters, and things as may be necessary for carrying such order into effect;

Offensive matter, &c. removed by public body, &c. may be destroyed or sold.

And any dung, manure, offal, filth, or refuse, and any other matter or thing removed by any such town council, trustees, commissioners, guardians, officers of health, or other body as aforesaid, in pursuance of this enactment, may be destroyed or sold, and in case of sale the proceeds arising therefrom shall be paid to or (as the case may require) be retained by the guardians of the poor, and shall be by them applied in aid of the rate for the relief of the poor of the parish, electoral division, or place in which such removal shall have been made.

In Scotland certain public officers, upon receipt of notice in writing from two householders

II. And be it enacted, that in SCOTLAND (*f*),—

Upon or as soon as can be after notice in writing in the form contained in the schedule (A.) to this Act annexed, or to the like effect, signed by two or more of the inhabitant householders of the parish or place to which the notice relates,—

Made to the procurator fiscal of any county, or the procurator fiscal or the dean of guild of any royal burgh, or the procurator fiscal of the justices of the peace of any county, or the commissioners of police or trustees for paving, lighting, or cleansing any city, town, burgh, parish, or place, or the inspector of the poor of any parish,—

Stating (*g*)—,

(*f*) See note (*a*) *ante*, p. 210.

(*g*) By the form of notice it appears that a statement, according to the best of the parties' knowledge or belief, is sufficient. Words to that effect are expressly inserted in s. 1, *ante*, p. 210.

11 & 12 Vict. c. 123.

That any dwelling-house or building within any royal burgh, or in any city, town, burgh, parish, or place, within or over which the jurisdiction or authority of any such procurator fiscal, or of such dean of guild, or commissioners of police, or trustees for paving, lighting, or cleansing, or inspector of the poor, extends, is in such a filthy and unwholesome condition as to be a nuisance to or injurious to the health of any person,— of the filthy condition of any building,

Or that upon any premises within such jurisdiction or authority there is any foul and offensive drain, ditch, gutter, privy, cesspool, or ashpit,— or, of any foul and offensive drains, &c.—

Or any drain, ditch, gutter, privy, cesspool, or ashpit, kept or constructed so as to be a nuisance to or injurious to the health of any person,— or of any drain, &c.—

Or that upon any such premises swine, or any accumulation of dung, manure, offal, filth, refuse, or other matter or thing, are or is kept so as to be a nuisance to or injurious to the health of any person,— or of any swine, or of accumulation of matter,—

Or that upon any such premises (being a building used wholly or in part as a dwelling house, or being premises underneath any such building,) any cattle or animal are or is kept so as to be a nuisance to or injurious to the health of any person,— or of any animal in or under dwellings, &c.—

It shall be competent (*h*) to any such procurator fiscal or dean of guild, or the proper officer of such commissioners of police or trustees, or such inspector of the poor respectively,— kept so as to be a nuisance to any person, &c. may

(*h*) In the clause applicable to England and Ireland it is imperative upon the authorities to proceed, and not merely permissive as in this clause; see *ante*, p. 211.

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After twenty-four hours from the giving notice in writing by service thereof upon some person on the premises referred to in such first-mentioned notice, or (if there be no person upon the premises who can be so served) by fixing the same upon some conspicuous part of such premises, or in case of emergency without notice,—

cause examination to be made;

By himself or others acting under his authority, with or without medical or other assistants, to enter such premises, and examine the same with respect to the matters alleged in such first-mentioned notice, and do all such works, matters, and things as may be necessary for that purpose;

and (if upon such examination or a medical certificate) it appear that the matter stated in the notice is true, public body shall make complaint before the sheriff or a justice, who shall order the owner or occupier to appear, &c.;

And if upon such examination, or upon the certificate in writing of two legally qualified medical practitioners, it appear that any dwelling house or building so examined is in such a filthy and unwholesome condition as aforesaid, or that upon any premises so examined there is any such drain, ditch, gutter, privy, cesspool, ashpit, swine, cattle, or animal, or any such accumulation, or other matter or thing, as aforesaid, such procurator fiscal, dean of guild, officer, or inspector shall make or cause to be made complaint to the sheriff or magistrates or a justice, who shall thereupon order the owner or occupier of the premises examined to appear before such sheriff or magistrates or two justices to answer such complaint;

order to be served on the premises,

And such order shall be served by delivering the same, or a true copy thereof, to some person upon the premises in respect whereof complaint is made, or (if there be no person upon the premises who can be so served) by fixing such

order or copy upon some conspicuous part of such premises; 11 & 12 Vict. c. 123, s. 2.

And if at the time and place appointed by such order it be proved to the satisfaction of such sheriff or magistrates or justices that any dwelling house or building in respect whereof complaint is made is in such a filthy and unwholesome condition as aforesaid, or that any such cause or causes of complaint as aforesaid exists or exist, and (in case such owner or occupier do not appear) that such order or copy was served as aforesaid, such sheriff or magistrates or justices shall make an order in writing under their hands (which order may be according to the form contained in the schedule (C.) to this Act annexed, or to the like effect,) for cleansing, whitewashing, or purifying such dwelling house or building, or for the removal or abatement of any such cause or causes of complaint, in such manner and within such time as shall be specified in such order (not being more than two clear days, exclusive of Sunday, after service of such order); and upon proof, &c., whitewashing, &c. or removal of the nuisance complained of, to be ordered.

And such last-mentioned order shall be forthwith served by delivering the same, or a true copy thereof, to some person upon the premises in respect whereof it is made, or, in case there be no person upon the premises who can be so served, by fixing such order or copy upon some conspicuous part of such premises; Order to be served on the premises:

And if such order be not complied with the owner or occupier against whom it is made, shall be liable to a penalty not exceeding ten shillings for every day during the continuance of his default (*i*), and the If such last-mentioned order be not complied with, owner or occupier in default to

(*i*) As to the recovery and application of penalties under this Act, *see* s. 17, *post*, p. 234.

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be liable to penalties, and the public officers to enter premises, and execute the order.

procurator fiscal or dean of guild or proper officer of the commissioners of police, or trustees or inspectors of the poor respectively, shall, by themselves or others acting under their authority, enter such last-mentioned premises, and cleanse, whitewash, or purify the same, or remove or abate the cause or causes of complaint in respect whereof the said last-mentioned order shall have been made, and do all such works, matters, and things as may be necessary for carrying such order into effect:

offensive matter, &c. removed by public officers may be destroyed or sold.

And any dung, manure, offal, filth, or refuse, and any other offensive or noxious matter or thing removed in pursuance of this enactment, may be destroyed or sold, and in case of sale the proceeds arising therefrom shall be paid to or (as the case may require) be retained by the parochial board for the management of the poor, and shall be by them applied in aid of the funds for the relief of the poor of the parish or place in which such removal shall have been made.

Recovery of costs, &c. from owner or occupier of the premises,—

III. And be it enacted, that whenever any such order as aforesaid for cleansing, whitewashing, or purifying any dwelling-house or building, or for the removal or abatement of any such cause or causes of complaint as aforesaid, has been obtained, all costs and expenses reasonably incurred in obtaining such order, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the owner or occupier of the premises in respect whereof such costs and expenses shall have been incurred, and may be recovered as such—

in county court, or civil bill court;

By the said town councils, trustees, commissioners, guardians, officers of health, or other body, or

by the said procurators fiscal, deans of guild, commissioners of police, or trustees and inspectors of the poor respectively, as such, in any county court, civil bill court, or (in Scotland) before the sheriff or magistrates or justices of the peace; 11 & 12 Vict. c. 123.

Or such town council, magistrates, trustees, commissioners, guardians, officers of health, or other body, or procurators fiscal, deans of guild, or inspectors of the poor, may, if they shall think fit, recover such costs and expenses before two justices, or (in Scotland,) before the sheriff or magistrates or two justices,— before justices of the peace, &c.

From the owner or occupier of the premises in respect of which such order is made;

And any two justices, or (in Scotland) the sheriff or magistrates or any two justices, upon the application of any such town council, magistrates, trustees, commissioners, guardians, officers of health, or other body, or procurator fiscal, dean of guild, or inspector of the poor, shall issue a summons, or (in Scotland) an order, requiring such owner or occupier to appear before them, or before him or them, at a time and place to be named therein; Mode of proceeding before justices, &c.: Summons or order to appear:

And at the time and place so named—

Upon proof to the satisfaction of such justices, or such sheriff or magistrates or justices, that any such costs and expenses have been so incurred as aforesaid,— Upon proof, &c. that costs have been incurred,—

And (in case such owner or occupier do not appear) that a copy of such last-mentioned summons or order was served by delivering the same to some person on the premises in respect of which the costs and expenses were incurred, and of service of the summons, &c. upon the premises,—

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or, if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of such premises,—

Justices to make order for payment, &c.

Such justices, or such sheriff or magistrates or justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing (in England or Ireland) under the hands and seals of such justices, or (in Scotland) under the hands of such sheriff or magistrates or justices, order him to pay the amount to the applicants, together with the costs attending such application and the proceedings thereon;

which may be enforced by distress and sale.

And if the amount be not paid within seven days after demand, the same may, by warrant under the hands and seals of the same or any other two justices, or (in Scotland) under the hands of the sheriff or magistrates or justices, by whom the last-mentioned order shall have been made, or any other two justices, be levied by distress and sale of the goods and chattels of the owner or occupier in default;

In case of no sufficient distress within jurisdiction of convicting justices, &c. warrant may be backed, &c.

And if no distress sufficient to satisfy the same can be found within the jurisdiction of the justices, or of the sheriff or magistrates or justices, by whom such warrant shall have been issued, and it so appear upon oath before two justices, or (in Scotland) before the sheriff or magistrates or two justices of any other county or jurisdiction in which any goods or chattels of the defaulter may be, such last-mentioned justices, or sheriff or magistrates or justices shall indorse their or his signatures or signature upon the last-mentioned warrant, and thereupon the amount to be levied, or so much thereof as may be unsatisfied, shall be levied of the last-mentioned goods and chat-

tels, in the same manner as if such warrant had been originally and properly issued by the justices, or by the sheriff, or magistrates or justices, of such last-mentioned county or jurisdiction. 11 & 12 Vict. c. 123.

IV. And be it enacted, that all costs and expenses reasonably incurred as aforesaid in carrying into effect any of the provisions hereinbefore contained, and not recovered from any owner or occupier of the premises in respect of which such expenses shall have been incurred, shall,— Costs of removing nuisances, &c. not recovered from owners, &c. to be defrayed out of funds for the relief of the poor ;—

Upon an order in writing, specifying the sum to be paid, under the hands and seals of two justices, or (in Scotland) under the hands of the sheriff or magistrates or two justices (who are hereby required to make such order, upon proper application in this behalf),—

Be retained, paid, or defrayed by the treasurer of such guardians or parochial board, or by the overseers of the poor, or other proper officers or persons, out of the funds in their hands applicable to the relief of the poor, and shall be charged to the parish, electoral division, or place maintaining its own poor in which the premises in respect whereof such costs and expenses shall have been so incurred are situated, and in other places (in England or Ireland) out of any public rates or funds raised in such places, or applicable thereto under the authority of parliament; or in extra parochial places out of any public funds,—

Or, in case there be no such rates or funds as last aforesaid, then—

Out of the funds for the relief of the poor of the parish, electoral division, or place nearest adjoining, or if there be two or more parishes or or out of funds for the relief of the poor of adjoining parish, &c.

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places nearest adjoining, out of the funds for the relief of the poor of such one of them as two justices shall, by order in writing under their hands and seals, appoint;

How to be recovered in Scotland in case there be no assessment for the poor:

And in case any such costs or expenses shall have been incurred on account or in respect of any parish in Scotland in which it shall happen that there is not at the time an assessment for the relief of the poor imposed or levied, then—

The same shall be paid or defrayed out of an assessment to be imposed and levied for that purpose, and to the extent necessary, under and in the manner provided by an Act of the ninth year of Her Majesty's reign, for the amendment and better administration of the laws relating to the relief of the poor in Scotland:

8 & 9 Vict. c. 83.

Penalties upon officers for refusal to pay.

And if any such treasurer, overseers, or officers or persons, neglect or refuse to pay the sum specified in any order of justices, or of any sheriff or magistrates, made under this enactment, for the space of twenty-one days after the date of such order, the same may, by warrant under the hands and seals of the same or any other two justices, or (in Scotland) under the hands of the sheriff or magistrates or any two justices, by whom such order shall have been made, or any other two justices, be levied by distress and sale (together with the costs of such distress and sale) of the goods and chattels of the treasurer, overseers, or other officers or persons in default.

Above provisions not to apply to districts and places in which

V. Provided always, and be it enacted, that nothing hereinbefore contained shall apply to any district, parish (*k*), or place in which the Public Health Act, 1848, or any part thereof, shall be in

(*k*) See *ante*, p. 3, note (*b*).

force, unless and except in so far as the general board of health, by order in writing, sealed with the seal of such board, and signed by two or more members thereof, or (in case there be no such board in existence) as one of Her Majesty's principal secretaries of state, by order in writing under his hand, shall otherwise direct (*l*);

11 & 12 Vict. c. 123. the Public Health Act is in force.

Provided also, that nothing in this Act shall be construed to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers, or to take away or interfere with any course of proceeding which might be resorted to or adopted by such commissioners if this Act had not been passed (*m*).

Jurisdiction of commissioners of sewers not to be impaired.

VI. And whereas by an Act passed in the sixth year of the reign of King William the Fourth, for consolidating and amending the laws relating to highways in England, the surveyor and district surveyor or assistant surveyor therein mentioned are empowered to scour, cleanse, and keep open all ditches, gutters, drains, or watercourses; and by an Act passed in the ninth year of Her Majesty's reign, for amending the laws concerning highways, bridges, and ferries in Scotland, the trustees or surveyors therein mentioned are empowered to cleanse the ditches made or to be made along the sides of any highway, in case of the neglect or refusal of the proprietor or occupier to cleanse such ditches when duly required so to do by such trustees or surveyors; and with a view to the more effectual removal of

Recital of 5 & 6 W. 4, c. 50, and 8 & 9 Vict. c. 41. with respect to the permissive power of surveyors of highways, &c. to cleanse ditches, &c. in England and Scotland.

(*l*) This proviso was inserted for the purpose of avoiding a conflict of jurisdiction.

(*m*) See the Metropolitan Sewers Act (11 & 12 Vict. c. 112), s. 69; and the City of London Sewers Act, 1848, s. 77, &c.

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nuisances injurious to health, it is expedient that such surveyor, district surveyor, or assistant surveyor, trustees, or surveyors, should not only be empowered but required to scour, cleanse, and keep clear, or cause to be scoured, cleansed, and kept clear, as far as may be practicable, all open ditches, gutters, drains, and watercourses upon, adjoining, or by or along the sides of any highway :—

Surveyor of highways, &c. in England and Scotland *required* to cleanse open ditches adjoining highways, &c.

Be it therefore enacted, that the said surveyor, or district or assistant surveyor, trustees or surveyors, shall scour, cleanse, and keep clear, or cause to be scoured, cleansed, and kept clear, as far as may be practicable, all open ditches, gutters, drains, and water-courses upon, adjoining, or by or along the sides of any highway (*n*):

Application of proceeds arising from sale of sewage, &c.

And any sewage, drainage, soil, filth, or other matter or thing whatsoever which shall be removed by any such surveyor, district or assistant surveyor, trustees or surveyors, from any such ditch, gutter, drain, or watercourse, in scouring, cleansing, and keeping clear the same, shall be disposed of by such surveyor, assistant or district surveyor, trustees or surveyors, and the proceeds arising therefrom shall be applied towards the repair of the highway within the parish or place in which such removal shall have taken place:

This section to be deemed part of 5 & 6 Will. 4, c. 50, and 8 & 9 Vict. c. 51.

And the provisions hereinbefore contained with respect to ditches, gutters, drains, and watercourses upon, adjoining, or by or along the sides of highways, shall, in so far as the same relate to England, be deemed to be part of the said Act relating to highways in England, and in so far as the same re-

(*n*) See the Metropolitan Sewers Act (11& 12 Vict. c. 112), s. 52.

late to Scotland, shall be deemed to be part of the said Act relating to highways in Scotland. 11 & 12 Vict. c. 123.

Drainage into open ditches from new houses or water-closets, a misdemeanor, &c.

VII. And be it enacted, that whosoever shall suffer any sewage, drainage, soil, filth, or any matter or thing of a noxious or offensive nature, to run or flow into or to remain in any open ditch, gutter, drain, or watercourse, so as to be a nuisance to or injurious to the health of any person,—

From any dwelling-house, building, or other premises which shall not have been occupied before the passing of this Act,—

Or from any privy or water-closet which shall not have been constructed before that time,—

Shall be deemed guilty of a misdemeanor, or (in Scotland) of an offence punishable by fine or imprisonment, and shall, in addition, be liable, for every such offence, to a penalty not exceeding five pounds for every day during which the offence is continued.

and prohibited under pecuniary penalties.

Notice to be given to general board of health, or in Ireland to commissioners of health, of intention to build or open certain hospitals, &c.

VIII. And be it enacted, that whenever it is intended to build or open any hospital for the reception of patients afflicted with contagious or infectious diseases or disorders, the trustees or other persons by whose authority such hospital is intended so to be built or opened as aforesaid shall give notice of such intention to the said general board of health, or (in Ireland) to the commissioners of health hereinafter mentioned;

and such hospitals not to be opened, &c. without approval.

And no such hospital shall be built or opened as aforesaid until the said general board of health or commissioners of health, as the case may be, have approved thereof in writing; but nothing herein

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contained shall apply to the building or opening of any addition to a building which shall have been used as a hospital previously to such addition.

Privy council, &c. empowered to issue orders for putting in force the provisions of this Act relative to the prevention of epidemic diseases, &c.

IX. And whereas it is expedient that when any part of the united kingdom shall appear to be threatened with or affected by any formidable epidemic, endemic, or contagious disease, measures of precaution should be taken with promptitude, according to the exigency of the case:—

Be it therefore enacted, that (in Great Britain) the lords and others of Her Majesty's most honourable privy council, or any three or more of them (the lord president of the council, or one of Her Majesty's principal secretaries of state, being one), and (in Ireland) the lord lieutenant or other chief governor or governors and privy council of Ireland, may, by order or orders to be by them from time to time made, direct that the provisions hereinafter contained for the prevention of epidemic, endemic, and contagious diseases, be put in force in Great Britain and Ireland respectively, or in such parts thereof or in such places therein respectively as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts or places to which any such order or orders may extend, and in like manner revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed (*o*).

orders may be amended, &c.

not to be made for more than six months at one time.

(*o*) The provisions for the prevention of epidemic, endemic, and contagious diseases are now in force throughout the whole of Great Britain, for six calendar months from Sept. 28, 1848,

11 & 12 Vict. c. 123.

X. And be it enacted, that from time to time after the issuing of any such order as last aforesaid, and whilst the same shall continue in force, the general board of health (in Great Britain) under the seal of the said board, and the hands of two or more members thereof (*p*), and (in Ireland) the commissioners of health for the time being, under the hands of two or more of them, may issue such directions and regulations as the said board or last-mentioned commissioners (as the case may be,) shall think fit for the prevention, as far as possible, or mitigation, of such epidemic, endemic, or contagious diseases, and from time to time, in like manner, revoke, renew, and alter any such directions or regulations, or substitute such new directions and regulations as to the said board or last-mentioned commissioners may appear expedient; and the said board or last-mentioned commissioners, as the case may be, may by such directions and regulations provide,—

After order by privy council, general board of health, &c., may issue directions and regulations,—

For the frequent and effectual cleansing of streets and public ways and places by the surveyors, district or assistant surveyors of highways, trustees, county surveyors, and others by law intrusted with the care and management thereof, or by the owners and occupiers of houses and tenements adjoining thereto; and—

for the frequent cleansing of highways, &c.;

For the cleansing, purifying, ventilating, and disinfecting of houses, dwellings, churches, buildings, and places of assembly, by the owners or occupiers and persons having the care and ordering thereof;

for cleansing and disinfecting buildings &c.;

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under an order of Her Majesty's Privy Council bearing date on that day.

(*p*) Several directions and regulations issued by the General Board under this enactment are now in force.

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removing nuisances;

For the removal of nuisances;

speedy interment;

For the speedy interment of the dead;

and generally for the purpose of prevention;

And generally for preventing or mitigating such epidemic, endemic, or contagious diseases, in such manner as to the said board or last-mentioned commissioners, (as the case may be,) may seem expedient:

and they may require guardians of the poor, &c.,—

And the said board or last-mentioned commissioners may by any such directions and regulations authorize and require the guardians of the poor in England and Ireland, and the parochial boards for the management of the poor in Scotland, by themselves or their officers, or any persons employed by them in the administration of the laws for the relief of the poor, or by officers specially appointed in this behalf,—

to superintend and, in certain cases, to execute said directions, &c.;

To superintend and see to the execution of any such directions and regulations, and (where it shall appear that there may be default or delay in the execution thereof, by want or neglect of such surveyors, trustees, or others intrusted as aforesaid, or by reason of poverty of occupiers, or otherwise,) to execute or aid in executing the same within their respective unions and parishes and combinations, and in any extra-parochial places adjoining to or surrounded by the same in which the directions and regulations of the said board or last-mentioned commissioners shall not be executed by the inhabitants;

to dispense medicines;

And to provide for the dispensing of medicines;

and afford medical aid;

And for affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases such medical aid as may be required;

and generally to do

And to do and provide all such acts, matters, and

things as may be necessary for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require : 11 & 12 Vict. c. 123, s. 10. whatever may be necessary.

And the directions and regulations to be issued as aforesaid shall extend— Regulations, &c.

To all parts or places in which the provisions of this Act for the prevention of epidemic, endemic, or contagious diseases shall for the time being be put in force under such orders as aforesaid, unless such directions and regulations shall be expressly confined to some of such parts or places, and then to such parts or places as in such directions and regulations shall be specified ; may be general or applied to particular places.

And (subject to the power of revocation and alteration herein contained) shall continue in force— Time for which they may be made.

So long as the said provisions of this Act shall be in force, under such orders, in the parts or places to which such directions and regulations shall under this provision extend :

Provided always, that if at any time in Ireland there shall not be any commissioners of health, the lord lieutenant, or other chief governor or governors of Ireland, by his or their warrants, may appoint so many persons as he or they may think fit, not being more in number than five, to act as commissioners of health in Ireland, without salary, fee, or reward : and may from time to time remove any of such commissioners, and appoint any other person in his stead ; and such commissioners shall for all purposes be commissioners of health in Ireland within the meaning and for the purposes of this Act. Proviso, in case there be no commissioners of health in Ireland.

XI. And be it enacted, that Her Majesty may One medical member of

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general board of health may be appointed to act during orders of privy council.

from time to time, during the continuance of any order of Her Majesty's privy council, or of any members thereof as aforesaid, by warrant under the royal sign manual, appoint, in addition to the members for the time being of the general board of health, one fit person to be a medical member of such board for the purposes of this Act; and Her Majesty may, at her pleasure, remove any person so appointed;

Treasury to pay allowances appointed by parliament.

And there shall be paid to the person or persons so appointed such allowance or allowances as shall be appointed by the commissioners of Her Majesty's treasury, out of any monies which may from time to time be appointed by parliament for that purpose.

Poor law commissioners, &c., may compel guardians, &c., to execute regulations and directions of the general board of health, &c.

XII. And be it enacted, that the commissioners for administering the laws for the relief of the poor in England and Ireland respectively, and the board of supervision established under the said Act for the amendment and better administration of the laws relating to the relief of the poor in Scotland, may require the officers and persons acting under them to inquire into, superintend, and report on the execution of the directions and regulations of the general board of health, or commissioners of health, as the case may be, under this Act, and shall have the same powers for enforcing and directing the execution of such directions and regulations by the said guardians and parochial boards respectively as they now or may hereafter have in relation to any matter concerning the administration of the laws for the relief of the poor.

Power of entry for the purpose of enforcing regulations of

XIII. And be it enacted, that the said guardians and parochial boards acting in the execution of any such directions or regulations as aforesaid, or the

officers or persons by them in this behalf authorized, at reasonable times in the daytime, may and they are hereby empowered to enter and inspect any dwelling or place, if there be ground for believing that any person may have recently died of any such epidemic, endemic, or contagious disease in any such dwelling or place, or that there is any filth or other matter dangerous to health therein or thereupon, or that necessity may otherwise exist for executing, in relation to the premises, all or any of such directions and regulations as aforesaid.

the general board of health, &c.

XIV. And be it enacted, that the said guardians and parochial boards may appoint or employ, for the superintendence and execution of the said directions and regulations, officers or persons in aid of the officers or persons employed in the administration of the laws for the relief of the poor; and such guardians and parochial boards respectively shall defray the expenses incurred by them respectively in the superintendence and execution of such directions and regulations out of the funds of their respective unions, parishes, or combinations;

Expenses of guardians, &c. to be paid out of funds (if any) for relief of the poor;

And if any such expenses shall have been incurred on account or in respect of any extra-parochial place in England or Ireland, the same shall, upon an order in writing specifying the sum to be paid, under the hands and seals of two justices, who are hereby empowered to make such order, upon proper application in this behalf, be paid or defrayed out of any public rates or funds raised therein or applicable thereto under the authority of parliament;

if none, out of any public funds;

Or in case there be no such rates or funds as last aforesaid, then—

or out of funds of adjoining unions, &c.

Out of the funds of the union or parish for which

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the guardians by whom the expenses have been incurred act;

How to be defrayed in Scotland if there be no assessment for the poor.

And in case any such expenses shall have been incurred on account or in respect of any parish in Scotland in which it shall happen that there is not at the time an assessment for the relief of the poor imposed or levied, then—

The same shall be paid or defrayed out of an assessment to be imposed and levied for that purpose, and to the extent necessary, under and in the manner provided by the said Act for the amendment and better administration of the laws relating to the relief of the poor in Scotland.

8 & 9 Vict. c. 83.

Orders, directions, and regulations for preventing epidemics, &c. to be laid before parliament.

XV. And be it enacted, that every order of Her Majesty's privy council, or of the lord lieutenant and privy council of Ireland, and every direction and regulation of the said general board of health or commissioners of health under this Act, shall, forthwith upon the issuing thereof, be laid before both houses of parliament, if parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next session of parliament:

Orders of privy council to be certified and published in Gazette.

And every such order of Her Majesty's privy council, or any members thereof, as aforesaid, shall be certified under the hand of the clerk in ordinary of Her Majesty's privy council, and shall be published in the "London Gazette;"

And every such order of the lord lieutenant and privy council of Ireland shall be certified under the hand of one of the clerks of the privy council of Ireland, and shall be published in the "Dublin Gazette:"

And every such direction and regulation as aforesaid when issued in Great Britain shall be published in the "London Gazette" and in the "Edinburgh Gazette," and when issued in Ireland, in the "Dublin Gazette:"

Directions of general board, &c. to be published in Gazette.

And such publication of any such order, direction, or regulation shall be conclusive evidence of the order, direction, or regulation so published, to all intents and purposes.

Publication to be evidence.

XVI. And be it enacted, that—

Penalties for obstructing officers, &c, in the execution of this Act;

Whosoever shall wilfully obstruct any person acting under the authority or employed in the execution of this Act,—

or violating directions, &c.

Or who shall wilfully violate any direction or regulation issued by the general board of health, or such commissioners of health as aforesaid, under this Act,—

Shall be liable for every such offence to a penalty not exceeding five pounds:

Penalties upon occupiers preventing execution of works, &c.

And if the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice, or (in Scotland) the sheriff or any justice, to whom application is made in this behalf, shall by order in writing (which may be according to the form contained in the Schedule (D.) to this Act annexed, or to the like effect,) require such occupier to permit the execution of the works required to be executed, provided that such works appear to such sheriff or justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a

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penalty not exceeding five pounds for every day afterwards during the continuance of such refusal.

Recovery of penalties in England or Ireland before two justices;

XVII. And be it enacted, that penalties imposed by this Act for offences committed in England or Ireland may be recovered by any person before any two justices, and may be levied by distress and sale of the goods and chattels of the offender, together with the costs of such distress and sale, by warrant under the hands and seals of the justices before whom the same shall be recovered, or any other two justices; and in case it shall appear to the satisfaction of such justices, before or after the issuing of such warrant, either by the confession of the offender or otherwise, that he hath not goods and chattels within their jurisdiction sufficient to satisfy the amount, they may commit him to any gaol or house of correction for any time not exceeding fourteen days, unless the amount be sooner paid, in the same manner as if a warrant of distress had issued and a return of nulla bona had been made thereon:

In case no sufficient distress in original jurisdiction, warrant may be backed, &c.

Recovery of penalties in Scotland before two justices;

And penalties imposed by this Act for offences in Scotland may be recovered by the procurator fiscal of the court, or by any other person, before the sheriff or two justices, who may proceed in a summary way, and grant warrant for bringing the parties complained upon immediately before him or them, and on proof on oath by one or more credible witness or witnesses, or other legal evidence, he or they may forthwith determine and give judgment, without any written pleadings or record of evidence, and grant warrant for the recovery of the penalties and expenses decerned for, and, failing payment

written pleadings, &c. unnecessary.

within eight days after conviction, by pointing, and imprisonment for a period, at the discretion of the sheriff or justices, not exceeding fourteen days: 11 & 12 Vict. c. 123.

And all penalties whatsoever recovered under this Act shall be paid to or (as the case may require) be retained by the guardians of the poor, or, in Scotland, the parochial board for the management of the poor, and shall be by them applied in aid of the rates or funds for the relief of the poor of the parish, electoral division, or place in which the penalties may have been incurred. Application of penalties.

XVIII. And be it enacted, that in case of any demand or complaint under this Act to which two or more owners or occupiers of premises may be jointly answerable, it shall be sufficient to proceed against any one or more of them, without in any manner proceeding against the others or other of them; One or more of several joint owners or occupiers may be proceeded against alone;

But nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law. but subject to contribution.

XIX. And be it enacted, that wherever in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description. Unnecessary to describe owner or occupier by name in certain cases.

XX. And be it enacted, that no order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, Proceedings not to be quashed for want of form.

APPENDIX. shall be vacated, quashed, or set aside for want of form, or be removed or removable by certiorari, or by suspension or advocation, or other writ or process whatsoever, into any of the superior courts.

Proceedings commenced under 9 & 10 Vict. c. 96, may be enforced, although that Act has expired.

XXI. And be it enacted, that all proceedings whatsoever commenced or taken or to be commenced or taken under the said first-recited Act of the tenth year of Her Majesty's reign, and which shall not have been completed and enforced, whilst the last-mentioned Act continues in force, may be proceeded with and enforced under the provisions of that Act, although such provisions be no longer in force, in the same manner in all respects and to all intents and purposes as if the same continued to be in force, and as if the said last-mentioned Act had not expired.

Interpretation of terms:

XXII. And be it enacted, that in this Act the following words and expressions shall have the meanings hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say),—

"Justice" and "justices":

The words "justice" and "justices" shall mean a justice or justices of the peace acting for the place where the matter or any part of the matter, as the case may be, requiring the cognizance of the "justice" or "justices" arises:

"Two justices":

The expression "two justices" shall mean two or more justices assembled and acting together, or one stipendiary or police magistrate acting in any police court for the place in which the matter or any part of the matter, as the case

may be, requiring the cognizance of "two justices," arises: 11 & 12 Vict. c. 123.

The word "sheriff" shall mean the sheriff of any county or place in Scotland where the matter requiring the cognizance of the "sheriff" arises, and shall include the sheriff substitute; "Sheriff":

The word "magistrates" shall mean the magistrates of any royal burgh in Scotland where the matter requiring cognizance arises: "Magistrates":

The words "guardians of the poor" and the words "parochial board" shall mean the guardians, directors, wardens, governors, parochial board, or other like officers having the management of the poor for any union, parish, combination, or place where the matter requiring the cognizance of any such officers arises: "Guardians of the poor": "Parochial Board":

The word "street" shall include every highway, road, square, row, lane, mews, court, alley, and passage, whether a thoroughfare or not: "Street":

The word "owner" shall mean any person receiving the rents of the property in respect of which that word is used from the occupier of such property, on his own account, or as trustee or agent for any other person, or who would receive the same if such property were let to a tenant: "Owner":

The word "person," and words applying to any person or individual, shall apply to and include corporations, whether aggregate or sole: "Person":

And words and expressions importing the singular number shall include the plural number: Number:

And words importing the masculine gender shall include females. Gender.

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Mode of citing this Act.

XXIII. And be it enacted, that in citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal and Diseases Prevention Act, 1848."

Act may be amended, &c.

XXIV. And be it enacted, that this Act may be amended or repealed in this present session of parliament.

11 & 12 VICT. c. 123.

SCHEDULES

TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A.)

Notice by Householders.

To the

Town council of the borough of ———

[*Or* guardians of the poor of the ——— union *or* of the parish of ——— in the county of ——— *or as the case may be*:

Or, in Scotland, to the procurator fiscal of the county of ——— *or* to the procurator fiscal *or* dean of guild of the burgh of ——— *or* to the procurator fiscal of the justices of the county of ———

Or to the inspector of the poor of the parish of ——— *or as the case may be*] (*a*).

WE, the undersigned (*b*) ——— inhabitants [*or, in Scotland,* householders] of ——— [*insert the parish or place*], and residing at ——— in [*insert the parish or place before mentioned*] aforesaid, do hereby give you notice, that to the best of our knowledge and belief—

A dwelling house [*or* building] situate at No. ——— in ——— street in ——— aforesaid [*or such other de-*

(*a*) *See* the form exhibiting analytically the several authorities to whom and the cases in respect of which notice may be given, *post*, p. 246.

(*b*) The commencement of the notice would more properly run thus:—"We the undersigned ——— *inhabitant householders* of." The first section of the bill as it was originally brought into the House of Commons required a notice from two "inhabitants rated to the relief of the poor," and the second section (with respect to Scotland) required a notice from two "householders." Both sections were subsequently amended so as to require a notice from *inhabitant householders* in all cases, but by an oversight the form in the text was not altered accordingly. No practical inconvenience can result from the the literal adoption of the form in its present state, but it will be more correct to make the alteration suggested.

A corrected form is inserted at p. 246, *post*.

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scription as may be sufficient to identify the premises] is in such a filthy and unwholesome condition as to be a nuisance to [*or* injurious to the health of] *A.B.*, [*or as the case may be*];

[*Or* that upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*) there is a foul and offensive drain, ditch, gutter, privy, cesspool, *or* ashpit;

Or a drain, *&c.*, kept *or* constructed so as to be a nuisance to us, *or* to the occupiers of the premises adjoining the premises aforesaid, *or as the case may be*;

Or that upon certain premises situate at, *&c.*, swine, *or* an accumulation of dung, manure, offal, filth, refuse, *or* matter, *or as the case may be*, are *or* is kept so as to be injurious to our health, *or* to the health of A.B., *or* of the occupiers of the premises adjoining the premises aforesaid, *or* of persons living in the neighbourhood, *or* of the persons living in the premises aforesaid, *as the case may be*;

Or that upon certain premises, *&c.* swine, *&c.* are kept so as to be a nuisance to us, *&c. as the case may be*]:

And we hereby required (*d*) that you will cause such proceedings to be taken as are directed in this behalf by the "Nuisances Removal and Diseases Prevention Act, 1848."

Dated this ——— day of ——— one thousand eight hundred and ———

A.B.
C.D.

SCHEDULE (B.)

Summons to Appear.

To the owner [*or* occupier] of a dwelling house [*or* building, *or* of certain premises], situate at [*insert such a description as may be sufficient to identify the premises*].

County of ———, [*or* borough, *&c.* of ———, *or* metropolitan police district, *or as the case may be*] to wit.

WHEREAS complaint hath been made to the undersigned, one of Her Majesty's justices of the peace acting in and for the said county of ——— [*or* borough, *&c.* of ——— *or* one of the magistrates of the police courts of the metropolis holden

(*d*) So in the ingrossment; the word "required" has been written instead of "require." It is a mere clerical error and of no consequence whatever.

at ——— *or as the case may be*], by the town council of the borough of ——— [*or as the case may be*] (*e*),— 11 & 12 VICT. c. 123.

That a certain dwelling house [*or* building] situate at No. ——— in the parish of ——— [*or as the case may be*] in the county of]——— *or such other description as may be sufficient to identify the premises*] is in such a filthy and unwholesome condition as to be a nuisance to *or* injurious to the health of A.B., *or as the case may be*:

[*Or* that upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*) there is a foul and offensive drain, ditch, gutter, privy, cesspool, *or* ashpit, *or* a drain, *&c.*, kept or constructed so as to be a nuisance to A.B., *&c.* (*as the case may be*):

Or that swine *or* an accumulation of dung, manure, offal, filth, refuse, or matter (*or as the case may be*), are *or* is kept so as to be injurious to the health of A.B., *or* of the occupiers of the premises adjoining the premises aforesaid, *or* of persons living in the neighbourhood of the premises aforesaid, *or* of persons living in the premises aforesaid, *or* a nuisance to A.B., *&c.*, *as the case may be*]:

These are therefore to require you to appear before two of her Majesty's justices of the peace [*or* one of the magistrates of the police courts of the metropolis, at the court holden at ———] on the ——— day of ——— next, at the hour of ———, to answer the matter of the said complaint.

Given under my hand and seal, this ——— day of ——— in the year of our Lord one thousand eight hundred and ———

J. K. (L.S.)

SCHEDULE (C.)

Order of Removal of Nuisances, &c.

To the owner [*or* occupier] of the dwelling house [*or* building *or* premises] situate at No. ——— in ——— street in the parish of ——— in the county of ——— [*or such other descrip-*

(*e*) The cause of complaint will of course follow the notice given by the authorities to the owner or occupier upon the premises, for which see *post*, p. 247, and *ante*, p. 239.

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tion as may be sufficient to identify the premises] and (*f*)—

To the town council of the borough of ———;

[*Or* to the guardians of the poor of the ——— union, *or* of the parish of ——— in the county of ———;

Or, in Scotland, the procurator fiscal of the county of ———;

Or the procurator fiscal *or* dean of guild of the burgh of ———;

Or the procurator fiscal of the justices of the peace of the county of ———

Or the inspector of the poor of the parish of ——— *as the case may be*];

And to their servants or agents, and to all whom it may concern.

County of ——— [*or* borough, *&c.* of ——— *or* Metropolitan police district, *or as the case may be*] to wit.

WHEREAS on the ——— day of ——— last complaint was made before the undersigned [*or* before *J. K.* esquire,] one of Her Majesty's justices of the peace acting in and for the county of ———;

[*Or* before the undersigned, *or J. K.* esquire, one of the magistrates of the police courts of the metropolis, *or as the case may be,*]

by the town council of the borough of ———;

[*Or* by the guardians of the poor of the ——— union, or of the parish of ——— in the county of ———;

[*Or, in Scotland,* by the procurator fiscal of the county of ——— *or* by the procurator fiscal *or* dean of guild of the burgh of ——— *or* by the procurator fiscal of the justices of the peace of the county of ———;

Or by the inspector of the poor of the parish of ——— *as the case may be*] (*g*);

That a dwelling house [*or* building] situate at No. ——— in ——— street in [*the parish or place before mentioned*] aforesaid, [*or such other description as may be sufficient to identify the premises,*] then was in such a filthy and unwholesome condition as to be a nuisance [*or* injurious to the health of] *A. B., or as the case may be*;

(*d*) The authorities to whom the order is addressed will, of course, be those by whom the complaint is made. For an enumeration of all the authorities by whom proceedings may be taken, see the commencement of the form, *post* p. 247.

(*e*) See the cases in respect of which an order may be made analytically enumerated, *ante*, p. 238, and *post*, p. 248.

11 & 12 VICT. c. 123. Schedule (C.)

[*Or* that upon certain premises situate at, *inserting such a description as may be sufficient to identify the premises*, there then was a foul and offensive drain, ditch, gutter, privy, cesspool, *or* ashpit, *or* a drain, *&c.*, kept or constructed so as to be a nuisance to *A. B. &c., as the case may be*:

Or that upon certain premises, situate, *&c.*, swine, *or* an accumulation of dung, manure, offal, filth, *or* refuse, *or as the case may be*, are *or* is kept so as to be injurious to the health of *A. B.*, *or* of the occupiers of the premises adjoining the premises first aforesaid, *or* of persons living in the neighbourhood of the premises first aforesaid, *or* of persons living in the premises first aforesaid, *or* so as to be a nuisance to *A. B.*, *&c.*:

And whereas the owner [*or* occupier] of the said dwelling house, [building *or* premises] having this day appeared before us, two of Her Majesty's justices of the peace acting in and for the county [*or* borough] of [*or* before me, one of the magistrates of the police courts of the metropolis, *or*, *in Scotland*, before the sheriff *or* magistrates *or* two justices of the peace, *as the case may be*], to answer the matter of the said complaint,—

[*Or in case the party charged do not appear*: And whereas it hath this day been proved to our *or* my satisfaction that a true copy of a summons requiring the owner *or* occupier of the said dwelling house *or* building *or* premises to appear this day before us *or* me has been duly served according to the statute in such case made and provided,—]

And it having been proved [*or* also proved, *as the case may require*],—

That the said dwelling house [*or* building] is in such a filthy and unwholesome condition as aforesaid,—

[*Or* that upon the premises aforesaid [*or* first aforesaid] there is a foul and offensive drain, privy, cesspool *or* ashpit, *or* a drain, *&c.* kept or constructed so as to be a a nuisance to *A. B. &c., as the case may be*,—

Or that upon the premises aforesaid, or first aforesaid, an accumulation of dung, manure, offal, filth, *or* refuse, *as the case may be*, is kept, or a pigsty exists, so as to be injurious to health as aforesaid *or* so as to be a nuisance to *A. B. &c.*; *as the case may be*]:—

We [*or* I] do hereby, in pursuance of the statute in such

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case made and provided, order the said owner [*or* occupier] of the said dwelling house [*or* building, *or* premises, *or* first-mentioned premises within ——— hours from the service of this order [*or* a true copy thereof], according to the statute in such case made and provided, to—

Cleanse [whitewash *or* purify] the said dwelling house;

[*Or* to cleanse, cover, *or* fill up, *or as the case may require*, the said drain, ditch, gutter, privy, cesspool, *or* ashpit, *or otherwise as the case may require*;

Or remove the said pigstye *or* accumulation of dung, offal, filth, refuse, *or* matter, *as the case may be*, so that the same shall not be injurious to health, *or* a nuisance, as aforesaid];

And if this order be not complied with, then we [*or* I] authorize and require you the said town council [*or* guardians of the poor, *or*, *in Scotland*, the procurator fiscal of the county of ——— *or* the procurator fiscal or dean of guild of the burgh of ——— *or* the procurator of the justices of the peace of the county of ——— *or* the inspector of the poor of the parish of ——— *as the case may be*] to enter upon the said dwelling house, [*or* building, *or* premises, *or* first mentioned premises,] and to do all such works, matters, and things as may be necessary for carrying this order into effect, according to the statute in such case made and provided.

And for your so doing this shall be your sufficient warrant.

Given under our hands and seals [*or*, my hand and seal, *or*, *in Scotland*, our hands, *or* my hand], this ——— day of ——— one thousand eight hundred and ———.

Signatures { (L. S.)* (L. S.)*

*[*In Scotland without Seals*]

SCHEDULE (D.)

Order to permit Execution of Works by Owners.

County of [*or* Borough, *or* Burgh .... *or* Metropolitan Police District, *or as the case may be*] to wit.

WHEREAS complaint hath been made to me, E.F., esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*] of ——— [*or* one of the magistrates of the police courts of the metropolis, *or as the case may be*, *or in Scotland*, to me, G. H., sheriff, *or* one of Her Majesty's justices of the peace, *as the case may be*, of the county of

———], by A.B., owner within the meaning of the "Nuisances Removal and Diseases Prevention Act, 1848," of certain premises, to wit, a dwelling house [*or* building, *or as the case may be*], situate [*insert such a description of the premises as may be sufficient to identify them*], in the parish of ——— in the said county [*or* borough, *&c.*], that C. D., the occupier of the said premises, doth prevent the said A. B. from obeying and carrying into effect the provisions of the said Act, in this, to wit, that he the said C. D. doth prevent the said A. B. from— 11 & 12 Vict. c. 123.

[*Here describe the works generally according to the circumstances; for instance, thus:* cleansing *or* whitewashing *or* purifying the said dwelling house, *or* building, *or* cleansing a foul and offensive drain, ditch, gutter, privy, cesspool, *or* ashpit, which exists upon the said premises, *or as the case may require*]:

And whereas the said C. D. having been summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said A.B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C. D. do permit the said A. B. to execute the same in the manner required by the said Act.

Given under my hand and seal [*or, in Scotland,* under my hand] this ——— day of ——— in the year of our Lord one thousand eight hundred and ———

E. F. (L.S.)*

* [*In Scotland without Seal*].

ADDITIONAL FORMS.

Petition for Application of the Public Health Act, 1848.

Additional Forms.

Whereas by the Public Health Act, 1848, it is enacted, that from time to time after the passing of that Act upon the petition of not less than one-tenth of the inhabitants, rated to the relief of the poor of any city, town, borough, parish or

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Now, therefore, we the undersigned inhabitants of the [city, *or* town, *or* borough, *or* parish, *as the case may be*,] of ——— in the county ——— of ——— [*or where the petition proceeds from a place not being a city, town, borough, or parish, insert instead of the words following the word* "therefore," *these words*, we the undersigned inhabitants of ——— in the county of ——— (the same being a place having a known or defined boundary within the meaning of the said Act)] and rated to the relief of the poor in respect of property within that [city, *or* town, *or* borough, *or* parish, *or* place, *as the case may be*], and being one-tenth in number of the inhabitants rated to the relief of the poor in respect of property within the same [city, *or* town, *or* borough, *or* parish, *or* place, *as the case may be*],—do hereby petition the general board of health to direct a superintending inspector to visit the said [city, *or* town, *or* borough, *or* parish, *as the case may be*], and to make inquiry and examination with respect thereto with a view to the application of the said Act according to the provisions thereof in that behalf.

[*Here insert the christian name and surname of the petitioners in full, and their residence in the city, town, borough, parish or place from which the petition proceeds.*

To the

IN ENGLAND OR IRELAND.

Town council of the borough of ——— : (*g*)

or

Trustees (*or* commissioners) for the drainage (*or* paving *or* lighting, *or* cleansing) of the city (*or* town, *or* borough, *or* parish) of ——— (*or* of ———, *as the case may be*,) in the county of ——— : (*g*)

or

Commissioners of sewers of ——— in the county of ——— (*or* for the limits of ———) :

or

Commissioners of police (*or* for managing or directing the police) of the city (*or* town, *or* borough, *or* parish of ——— *or* ———) in the county of ——— (*g*) :

or

Guardians of the poor of the ——— union, (*or* of the parish of ———) in the county of ——— :

IN IRELAND.

or

Officers of health of the parish of ——— in the county of ——— :

or

IN SCOTLAND.

Procurator fiscal of the county of ——— (*or* of the burgh of ——— *or* of the justices of the peace of the county of ———) :

or

Dean of guild of the burgh of ——— :

or

Commissioners of police of the city (*or* town, *or* burgh, *or* parish of ——— *or* of ———) in the county of ——— :

or

Trustees for paving (*or* lighting, *or* cleansing) the city (*or* town, *or* burgh, *or* parish of ——— *or* ———) in the county of ——— :

or

Inspector of the poor of the parish of ——— in the county of ——— :

(*g*) The notice may be given to any other similar body; see *ante*, p. 210.

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We the undersigned ——— inhabitant householders of ——— and residing at ——— in ——— (*insert the last mentioned parish or place*) aforesaid, do hereby give you notice that, to the best of our knowledge and belief,—

(1)

There now is upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*), in ———, a foul and offensive ditch (*or* gutter, *or* drain, *or* privy, *or* cesspool, *or* ashpit, *as the case may be.*)

or (2)

There now is upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*), in ———, a ditch (*or* gutter, *or* drain, *or* privy, *or* cesspool, *or* ashpit, *as the case may be*) kept (*or* constructed, *or* kept and constructed) so as to be a nuisance to (*or* injurious to the health of) us (*or* A.B. *or* the occupiers of the premises adjoining the premises aforesaid, *or* persons living in the neighbourhood of the premises aforesaid, *or* so as to be injurious to the health of the occupiers of the premises aforesaid.)

or (3)

Swine are kept upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*), in ———, so as to be a nuisance to (*or* injurious to the health of) A.B. (*or as the case may be, as in case* (2).)

or (4)

There now is an accumulation of dung (*or* manure, *or* offal, *or* filth, *or* refuse, *or as the case may be*) (*h*) kept upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*), in ———, so as to be a nuisance to (*or* injurious to the health of) A. B. (*or as the case may be, as in case* (2).)

or (5)

There now is upon certain premises situate at (*inserting such a description as may be sufficient to identify the premises*), in

(*h*) Notice may also be given with respect to *any matter or thing* kept so as to be a nuisance to or injurious to the health of any person, see *ante*, pp. 210, 211.

———, such premises being a dwelling-house, (*or* being a building used partly as a dwelling-house, *or* being premises underneath a building, used wholly or in part as a dwelling-house) cattle (*or* an animal) to wit ——— (*as the case may be*) are kept so as to be a nuisance to (*or* injurious to the health of) A.B. (*or* ——— (*as the case may be.*)

or (6)

A dwelling-house or building, situate at No. ——— in ——— street, in ——— aforesaid (*or such other description as may be sufficient to identify the premises*) is in such a filthy and unwholesome condition as to be injurious to the health of the occupiers thereof (*or* a nuisance to A. B.)

And we hereby require that you will cause such proceedings to be taken as are directed in this behalf by the "Nuisances Removal and Diseases Prevention Act, 1848."

Dated this ——— day of ——— in the year of our Lord One Thousand Eight Hundred and ———

A. B.
C. D.

Notice of Entry by the Public Authorities.

To the owner and occupier of certain premises (*or* of a certain dwelling house *or* building) reputed to be in the occupation of ——— (*or* of ——— and others) and situate at ——— in the parish of ——— in the county of ——— and to all whom it may concern.

WHEREAS the town council of the borough of ——— (*or as the case may be.* See *an enumeration of the authorities in the form, ante*, p. 247), have received notice in writing, dated the ——— day of ——— and signed by two inhabitant householders of ——— aforesaid, stating, that to the best of the knowledge and belief of such inhabitants ———

The said dwelling house (*or* building) then was in such a filthy and unwholesome condition as to be a nuisance to (*or* injurious to the health of) ——— (*as the case may be, following, as nearly as can be, the terms of the householders' notice*; see *supra*, p. 248, 249),—

or,

That upon certain premises there then was a foul and offensive drain, &c. (*as the case may be, following, as*

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nearly as can be, the terms of the householders' notice, see *ante*, p. 248, 249).

And requiring the said town council (*or as the case may be,*) to cause such proceedings to be taken as are directed in that behalf by the "Nuisances Removal and Diseases Prevention Act, 1848."

[*If the notice be given by a committee, insert* in this place, And whereas a committee of the said town council (*or as the case may be*), has been duly appointed by the said town council (*or as the case may be*), under the said Act, for the purpose of taking all such proceedings, and doing all such things on their behalf as may be done by a committee appointed under the said Act].

Now, therefore, the said town council (*or as the case may be*)—

[*Or if the notice be given by a committee,* the said committee]—

Do hereby give you notice, that at the expiration of twenty-four hours after the delivery or affixing hereof, as directed by the said Act, or as soon after as conveniently may be, they will, by themselves, their servants or agents, with or without medical or other assistants, enter the said dwelling house (*or* building, *or* premises *as the case may require*), and examine the same with respect to the matters alleged in the first-mentioned notice, according to the said statute in this behalf, unless (*t*) in the meantime it be shown to the satisfaction of the said town council (*or as the case may be, or if the notice be given by a committee,* the said committee), that the said notice is without foundation, or that the matters complained of have been removed or abated.

Dated the ——— day of ——— in the year of our Lord one thousand eight hundred and ———

By order of the said town council, &c., (*or as the case may be, or* the said committee, *as the case may be*).

——— Clerk.

(*t*) This clause may be inserted or omitted at discretion.

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(*a*) Imperative duties are expressed in the statute by the word *shall*, and permissive powers by the word *may*.

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(*b*) Permissive powers are expressed in the statute by the word *may*, and imperative duties by the word *shall*.

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LIST OF FORMS

Under the Acts 11 *&* 12 *Vict. cc.* 42, 43,

PUBLISHED BY

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INDICTABLE OFFENCES, 11 & 12 VICT. CAP. 42.

A. Information and Complaint for an indictable Offence.

B. Warrant to apprehend a Person charged with an indictable Offence.

C. Summons to a Person charged with an indictable Offence. (2 *on a sheet and* 4 *on a sheet.*)

D. Warrant where the Summons is disobeyed.

E. Warrant to apprehend a Person charged with an indictable Offence committed on the High Seas or Abroad.

F. Certificate of Indictment being found.

G. W[illegible]nt to apprehend a Person indicted.

H [illegible]t of Commitment of a Person indicted.

[illegible]nt to detain a Person indicted who is already in [illegible]stody for another Offence.

[illegible]ns of a Witness. (2 *on a sheet and* 4 *on a sheet.*)

[illegible]t where a Witness has not obeyed a Summons.

[illegible]t for a Witness in the first instance.

[illegible]nt of Commitment of a Witness for refusing to be [illegible]worn or to give Evidence.

M. Depositions of Witnesses. (*Whole sheets and half sheets.*)

M. *a.* Ruled Foolscap for ditto.

N. Statement of the Accused. (*Whole sheets and half sheets.*)

O. 1. Recognizance to prosecute, with condition to prosecute. *On parchment.*

O. 3. Recognizance to prosecute and give Evidence, with condition to prosecute and give Evidence. *On parchment.*

O. 4. Recognizance to give Evidence, with condition to give Evidence. *On parchment.*

O. 2. Notice of the said Recognizance to be given to the Prosecutor and his witnesses. *In books.*

P. 1. Commitment for refusing to enter into the Recognizance.

P. 2. Subsequent Order to discharge the Witness.

Q. 1. Warrant remanding a Prisoner.

Q. 2. Recognizance of Bail, instead of Remand, on an adjournment of Examination. *On parchment.*

Q. 3. Notice of such Recognizance to be given to the Accused and his Sureties. *In books.*

Q. 4. Notice of such Recognizance to be given to the Sureties. *In books of* 50 *and* 100.

R. 1. Warrant to convey the Accused before a Justice of the County, &c. in which the Offence was committed.

R. 2. Order for Payment of the Constable's Expenses.

S. 1. Recognizance of Bail, with condition in ordinary case. *On parchment.*

S. 6. Recognizance of Bail, with condition where the Defendant is entitled to a Traverse. *On parchment.*

S. 2. Notice of the said Recognizance to be given to the Accused and his Bail. *In books.*

S. 7. Notice of Recognizance to be given to the Bail of the Accused in ordinary cases. *In books of* 50 *and* 100.

S. 3. Notice of Recognizance to be given to the Accused and his Bail, where the Defendant is entitled to a Traverse. *In books* of 50 and 100.

S. 8. Notice of Recognizance to be given to the Bail of the Accused where the Defendant is entitled to a Traverse. *In books of* 50 *and* 100.

S. 4. Certificate of consent to Bail by the Committing Justice.

S. 5. Warrant of Deliverance, on Bail being given for a Prisoner already committed.

T. 1. Warrant of Commitment.

T. 2. Gaoler's Receipt to the Constable for the Prisoner, and Justices' Order thereon for Payment of the Constable's Expenses in executing the Commitment.

SUMMARY CONVICTIONS AND ORDERS,

11 & 12 VICT. CAP. 43.

A. 1. Information for an Offence punishable on Conviction.

A. 2. The like, *qui tam.*

A. Summons to the Defendant, upon an Information or Complaint. (2 *on a sheet and* 4 *on a sheet.*)

B. Warrant, where the Summons is disobeyed.

C. Warrant in the first instance.

D. Warrant of Committal for safe Custody during an adjournment of the Hearing.

E. Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with. *On parchment.*

U. Notice of such Recognizance to be given to the Defendant and his Surety. *In books.*

U. 1. Notice of Recognizance to be given to Sureties where Bail is taken upon the Hearing being adjourned. *In books of* 50 *and* 100.

G. 1. Summons of a Witness. (2 *on a sheet and* 4 *on a sheet.*)

G. 2. Warrant, where a Witness has not obeyed a Summons.

G. 3. Warrant for a Witness in the first instance.

G. 4. Commitment of a Witness for refusing to be sworn or to give Evidence.

H. Warrant to remand a Defendant, when apprehended.

I. 1. Conviction for a Penalty to be levied by Distress, and, in default of sufficient Distress, Imprisonment. *On paper and parchment.*

I. 2. Conviction for a Penalty, and, in default of Payment, Imprisonment. *On paper and parchment.*

I. 3. Conviction when the punishment is by Imprisonment, &c. *On paper and parchment.*

K. 1. Order for Payment of Money, to be levied by Distress, and in default of Distress, Imprisonment.

K. 2. Order for Payment of Money, and in default of Payment, Imprisonment.

K. 3. Order for any other matter, where the disobeying of it is punishable with Imprisonment.

L. Order of Dismissal of an Information or Complaint.

M. Certificate of Dismissal.

N. 1. Warrant of Distress upon a Conviction for a Penalty.

N. 2. Warrant of Distress upon an Order for the Payment of Money.

N. 5. Warrant of Commitment for want of Distress.

N. 6. Warrant of Commitment for want of Distress upon an Order.

O. 1. Warrant of Commitment, upon a Conviction for a Penalty in the first instance.

O. 2. Warrant of Commitment on an Order, in the first instance.

P. 1. Warrant of Commitment on a Conviction, where the Punishment is by Imprisonment.

P. 2. Warrant of Commitment, on an Order, where the disobeying of it is punishable by Imprisonment.

P. 3. Warrant of Distress for Costs, upon a Conviction, where the offence is punishable by Imprisonment.

P. 4. Warrant of Distress for Costs, upon an Order, where the disobeying of the Order is punishable with Imprisonment.

P. 5. Warrant of Commitment for want of Distress for Costs upon an Order.

P. 6. Warrant of Commitment for want of Distress for Costs upon a Conviction.

Q. 1. Warrant of Distress for Costs, upon an Order of Dismissal of an Information or Complaint.

Q. 2. Warrant of Commitment for want of Distress upon an Order of Dismissal.

R. Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.

S. 1. Warrant of Distress for Cost of an Appeal against a Conviction.

S. 3. Warrant of Distress for Costs of an Appeal against an Order.

S. 2. Warrant of Commitment for want of Distress for Costs of an Appeal against an Order.

S. 4. Warrant of Commitment for want of Distress for Costs of an Appeal against a Conviction.

T. Account of Clerk of the Justices at Petty Sessions, and the Keeper of the Gaol or House of Correction.

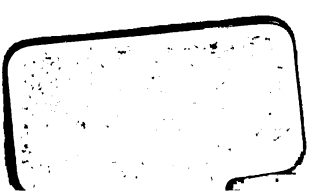
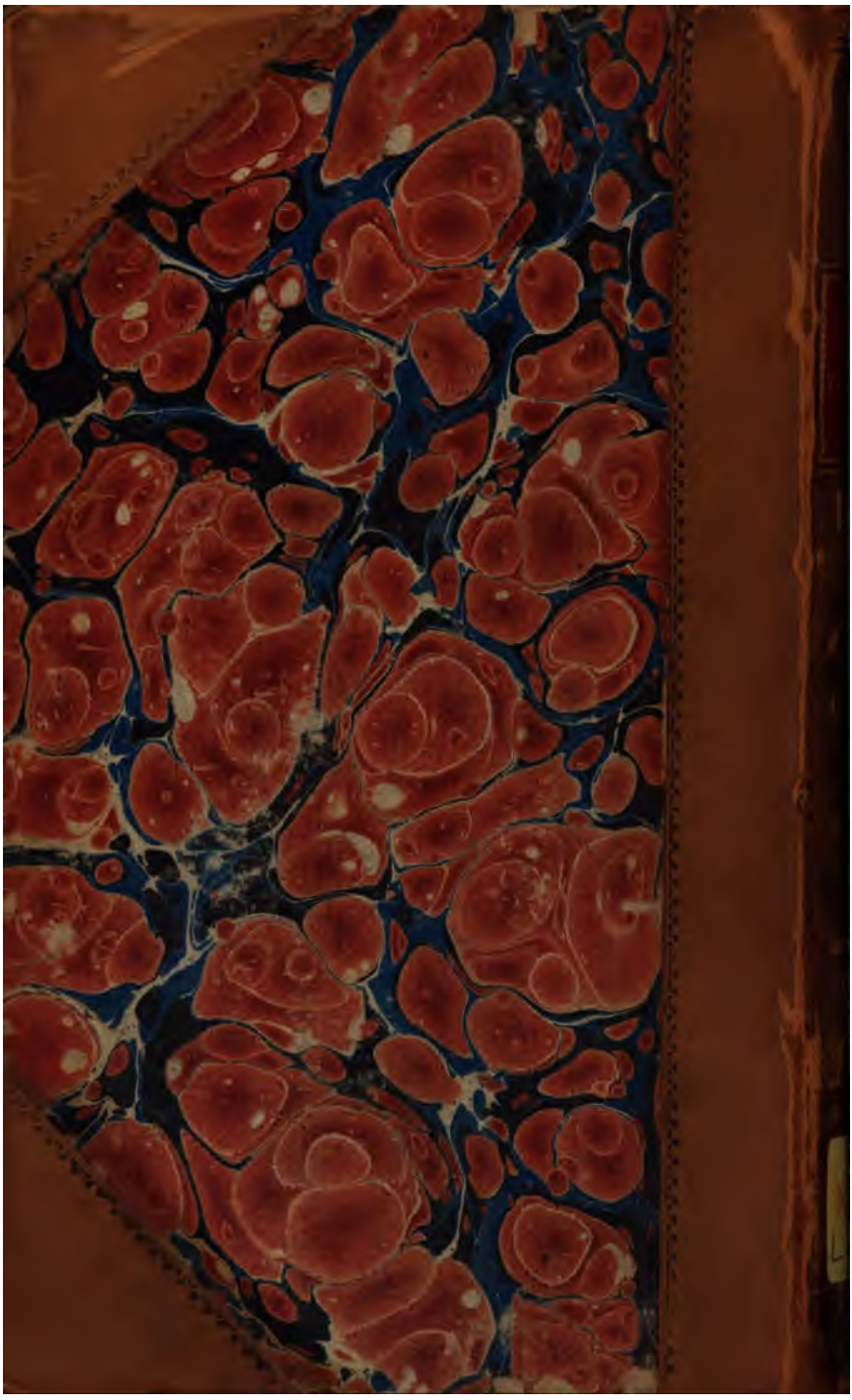
T. *a*. Ditto, ditto. *In Books* of 1, 2, and 3 quires, indexed.

V. Archbold's Minute Book of Convictions. *In books* of 100, 6*s*. 200, 10*s*. 6*d*. 300, 14*s*. 6*d*.

W. Ditto, Ditto, Orders, ditto, ditto.

Just Published, 12*mo*. *cloth boards*, 8*s*.

The SECOND EDITION of

JERVIS'S ACTS, 11 & 12 Victoria, cc. 42, 43, and 44; relating to the Duties of Justices of the Peace out of Sessions, as to Indictable Offences, Convictions and Orders; and to the Protection of Justices in the Execution of their Duties; with Practical Notes and Forms. By JOHN FREDERICK ARCHBOLD, Esq. Barrister-at-Law.

"We may safely commend this work to the attention of the public, as one on which its author has bestowed much pains and learning, and which is equally worthy of him and of the support which it cannot fail to receive from them."—*Justice of the Peace.*